



**INFORMATION PACKET ON**

**HOW TO BECOME  
A CERTIFICATED AIR CARRIER**

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# TABLE OF CONTENTS

<b>PART I</b> .....	<b>1</b>
<b>APPLICATION PROCEDURES AND EVIDENCE REQUIREMENTS</b> .....	<b>1</b>
AIR CARRIER AUTHORITY .....	3
FILING AN APPLICATION.....	4
Filing Fees.....	5
Supporting Information.....	5
Confidential Treatment .....	5
Service and Filing .....	6
PROCESSING THE APPLICATION .....	6
Staff Review.....	6
Action by the Department .....	7
EVIDENCE REQUIREMENTS.....	9
Fitness Test .....	9
General.....	10
Corporate Structure and Ownership.....	11
Management Expertise and Technical Ability.....	15
Financial Position and Operating Plans .....	17
Compliance Disposition.....	21
Certification .....	23
OTHER REQUIREMENTS .....	23
Accident Plans.....	23
Passenger Manifest Information .....	24
Insurance and Limits of Liability.....	24
Name/Tradename Registration.....	25
CONTINUING FITNESS.....	25
Operating Limits .....	25
First Year Progress Report.....	26
Substantial Changes .....	26
Dormancy.....	26
Transfer of Authority .....	27
<b>PART II</b> .....	<b>28</b>
<b>SAMPLE APPLICATIONS</b> .....	<b>28</b>
Sample Application for Air Carrier Authority .....	29
Sample Certificate of Service.....	33
Sample Motion for Confidential Treatment of Documents .....	35
Sample Notice of Intent to Resume Service .....	39
Sample Waiver of the 45-day Advance Filing Requirements of 14 CFR 204.7.....	43
Sample Waiver of the Revocation-for-Dormancy Provisions of 14 CFR 204.7 .....	47
Sample Application for the Transfer of Air Carrier Certificate Authority .....	51
<b>PART III</b> .....	<b>55</b>
<b>APPLICABLE DEPARTMENT OF TRANSPORTATION REGULATIONS</b> .....	<b>55</b>
Part 200--Definitions And Instructions.....	56
Part 201--Air Carrier Authority .....	57

Part 203 -- Waiver Of Warsaw Convention Liability Limits.....	59
Part 204--Data To Support Fitness Determinations .....	60
Part 205 -- Aircraft Accident Liability Insurance .....	63
Part 206--Certificates Of Public Convenience And Necessity: Special Authorizations & Exemptions.....	67
Part 215--Use And Change Of Names.....	68
Part 243--Passenger Manifest Information .....	69
Part 298--Exemptions For Air Taxi & Commuter Air Carrier Operations.....	71
Part 302--Rules Of Practice In Proceedings .....	78
Aviation Disaster Family Assistance Act Of 1996 .....	114
<b>PART IV .....</b>	<b>117</b>
<b>SAMPLE FORMS.....</b>	<b>117</b>
Affidavit Of Citizenship.....	119
Affidavit Of Safety Compliance .....	120
Certificate Of Insurance – OST Form 6410.....	121
Interim Agreement Of Air Carriers.....	123



**PART I**  
**APPLICATION PROCEDURES AND EVIDENCE REQUIREMENTS**



## AIR CARRIER AUTHORITY

Under Title 49 of the United States Code (“the Statute”),<sup>1</sup> anyone who wants to provide air transportation service<sup>2</sup> as an air carrier must first obtain two separate authorizations from the Department of Transportation: “safety” authority in the form of an Air Carrier Certificate and Operations Specifications from the Federal Aviation Administration (FAA),<sup>3</sup> and “economic” authority from the Office of the Secretary of Transportation (the Department) in the form of a certificate for interstate or foreign passenger and/or cargo authority issued under section 41102 of the Statute.<sup>4</sup>

Certificates may authorize either scheduled service or charter-only service. A certificate authorizing interstate<sup>5</sup> air transportation may be issued after a finding by the Department that the applicant is “fit, willing, and able” to perform the proposed service. The award of a certificate for foreign authority<sup>6</sup> must also be found to be “consistent with the public convenience and necessity.”

This packet contains information on how to obtain interstate and foreign certificate authority from the Department. This packet is also available on the internet at:

<http://ostpxweb.dot.gov/aviation/index.html><sup>7</sup>

If you have any questions concerning the information in this document or the Department’s procedures for issuing certificates, please contact the Air Carrier Fitness Division on 202-366-9721.

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<sup>1</sup> Copies of the Statute may be obtained directly from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

<sup>2</sup> “Air transportation,” as defined by section 40102(a)(5) of the Statute, means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, in interstate or foreign air transportation.

<sup>3</sup> The requirements for obtaining FAA safety authority are contained in 14 CFR Parts 119, 121, and 135.

<sup>4</sup> There are certain exceptions to this rule. Section 40109 of the Statute allows the Department to grant exemptions from the certificate requirement where it finds that such exemptions are “consistent with the public interest.” Such exemptions may be granted to individual air carriers or to groups or classes of air carriers. Carriers proposing to operate only small aircraft, that is aircraft with an original design capacity of 60 or fewer seats or with an original payload capacity of 18,000 pounds or less, are exempt from the certificate requirements and may obtain authority as an air taxi operator or commuter air carrier in accordance with the provisions of Part 298 of the Department’s Regulations (14 CFR Part 298).

<sup>5</sup> “Interstate air transportation,” as defined in section 40102(a)(25) of the Statute, means operations between points in the United States; between points in the United States, on the one hand, and points in U.S. territories or possessions, on the other; or between points both of which are in U.S. territories or possessions.

<sup>6</sup> “Foreign air transportation,” as defined in section 40102(a)(23) of the Statute, means operations between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

<sup>7</sup> At this site, click on “Site Map” at the top of the screen. Scroll down and select “Air Carrier Economic Authority,” which is located to the right of the “Domestic Affairs” box. Then click on “How-To Publications.”

Information on other types of air carrier authority may be obtained from the Department as follows:

For information on obtaining an *air carrier certificate from the FAA*, contact a local FAA Flight Standards District Office in your area or:

Flight Standards Certification Surveillance Division  
Federal Aviation Administration  
AFS-900, Suite 131  
45005 Aviation Drive  
Dulles, Virginia 20166  
(703) 661-0500

A list of Flight Standards Regional and District Offices may be obtained on the internet at:

<http://www.faa.gov/avr/afs/fsdo/index.cfm>

For information on *commuter air carrier authority*, contact:

Air Carrier Fitness Division  
Department of Transportation  
X-56, Room 6401  
400 Seventh Street, SW  
Washington, DC 20590  
(202) 366-9721

For information on *air taxi authority*, contact:

Program Management Branch  
Federal Aviation Administration  
AFS-260, Room 831  
800 Independence Avenue, SW  
Washington, DC 20591  
(202) 267-7773 or 267-7897

## **FILING AN APPLICATION**

Reprinted in Part III of this packet is a copy of Part 201 of the Department's Regulations, which describes the rules for filing an application for certificate authority. Separate applications are required to obtain interstate authority and foreign authority. Sample applications are included in Part II of this packet.

## **Filing Fees**

The fees for filing applications for certificate authority are as follows:

Interstate scheduled certificate authority	\$ 850
Foreign scheduled certificate authority	\$ 900
Both interstate and foreign scheduled certificate authority	\$1,750
Interstate charter certificate authority	\$ 850
Foreign charter certificate authority	\$ 600
Both interstate and foreign charter certificate authority	\$1,450

## **Supporting Information**

At the time an application is filed, the supporting information that the applicant will rely on to convince the Department that it is “fit, willing, and able” to operate should be submitted. The evidentiary material required to be submitted with the application is detailed in section 204.3 of Part 204 of the Department's Regulations, a copy of which can be found in Part III of this packet. A discussion of these requirements is contained in the section below on “**Evidence Requirements.**” If an applicant is seeking both interstate and foreign certificate authority, the evidence in support of the applicant's fitness to operate need only be included with one of the applications and incorporated by reference in the other.

## **Confidential Treatment**

Should the applicant wish to seek confidential treatment for any portion of the fitness information submitted, it should use the procedures set forth in section 302.12 of the Department's Regulations, a copy of which is included in Part III. A sample of such an application is included in Part II. Information for which confidential treatment will generally be granted includes the specific fares to be charged, estimated revenue passenger miles, available seat miles, and projected load factor, as well as aircraft leases, loan agreements, and financial statements of individuals or entities (other than parent and/or sister companies) providing funding to the applicant. Conversely, absent a clear and justifiable reason for doing so, confidential treatment generally will not be granted for an applicant's current or historical financial statements, expense forecasts, or the identity of and resumes for key personnel. Applicants should bear in mind that requesting confidential treatment of documents may significantly slow the processing of a company's application while the Department reviews the confidentiality request. Therefore, applicants are advised to carefully review the need for such treatment and submit for the public record redacted versions of the documents at issue that reflect all information but that which the company considers to be particularly proprietary or otherwise commercially or financially sensitive.

## Service and Filing

Applicants for certificate authority are required to serve their applications on persons who may have an interest in the proposed operation. A list of the persons requiring service is contained in section 302.203(b) of the Department's Regulations, which may be found in Part III. In addition to these persons, a copy of the application should be provided to the FAA Flight Standards District Office with which the applicant has filed, or intends to file, its request for FAA authority.

An original and 6 copies of each certificate application and evidentiary material, together with the required filing fee made payable to the "U.S. Department of Transportation" should be filed with:

Department of Transportation Dockets  
Room PL-401  
400 Seventh Street, SW  
Washington, DC 20590  
(800) 647-5527

## **PROCESSING THE APPLICATION**

Applications for certificate authority should be *complete* when filed, that is, all of the information required by section 204.3 to determine a company's fitness to operate, as discussed below in "**Evidence Requirements**," should be included. Applications should *not* be filed with the Department until after the applicant has progressed to the point where it has resolved all significant issues relating to its fitness. Thus, before filing an application, an applicant should have (1) determined its operating proposal, including identifying the aircraft it intends to use and the markets it intends to serve, and prepared complete revenue, expense, and traffic data supporting its plan, (2) identified all key management personnel, and (3) obtained the funding needed to meet the Department's financial fitness criteria, or, at a minimum, developed a reasonable and verifiable plan for doing so. **Filing incomplete applications will only result in delays in processing and the possible dismissal or rejection of the application.**

## Staff Review

Applications for certificate authority are processed under Subpart B of the Department's Procedural Regulations (14 CFR 302.201 *et seq.*, which is reprinted in Part III). Upon receipt of an application, the Department's Dockets Section will assign it a docket number and place the application in a file which is available to the public at the Department's headquarters and via the internet [<http://dms.dot.gov>]. The application will then be forwarded to the Air Carrier Fitness Division where it will be assigned to a staff analyst for review and processing.

If some additional or clarifying information is required, the staff analyst will so advise the applicant, usually by letter, and provide it with an opportunity, usually 30 days, to submit any required material. Any such subsequent filing, as well as any amendments to the

application, such as changes in the type of authority requested or in the applicant's service proposal, should be filed with the Department's Dockets Section, with an original and 6 copies, referencing the docket number(s) assigned to the initial application(s).

Interested persons have 21 days from the date the application (or any subsequent amendment) is filed to submit answers to the application in support of or in opposition to the authority requested. If an answer is filed, the applicant has 14 days to file a reply.

### **Action by the Department**

After review of the filed documents, including any answers, the Department will decide on the procedures it will follow in handling the application.<sup>8</sup>

Because of the substantial drain that processing incomplete or poorly prepared applications places on the Department--particularly in diverting staff resources from processing the applications of persons who are well prepared--if an applicant is unable to provide complete information in its application or in response to the staff's initial information request, the Department may dismiss or reject the application. Generally, such action is taken "without prejudice" to the applicant's refiling for certificate authority at a later date when it is able to present a complete application.

Where the application is complete, and where there appear to be no material issues of fact that cannot be resolved on the written record, the Department will usually act on the application by use of "show-cause" procedures.<sup>9</sup> In such cases, the Department's Assistant Secretary for Aviation and International Affairs will issue an order tentatively finding the applicant fit and proposing to issue it a certificate authorizing the requested service. A copy of the order will be sent to the applicant, any person who has filed an answer to the application, and interested FAA offices. A summary of the order will also be published in the Federal Register. The order will allow interested persons an opportunity (usually 14 days) to file comments and "show cause" why the Department should or should not adopt its proposed fitness findings and award of authority.

If no objections are filed, an order finalizing the tentative findings will be issued. If objections are filed, the applicant will have an opportunity to reply to them (usually 7 days)

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<sup>8</sup> As part of its review, the Department will contact the FAA to determine the status of any application that the applicant has filed with that agency, and whether the FAA has uncovered any potential problems or concerns with the applicant. While an applicant may wish to pursue its Department and FAA authorities simultaneously, the FAA generally will not proceed to review an applicant's operations, maintenance, or training manuals unless it has been notified by the Department that there are no significant problems with the application for economic authority.

<sup>9</sup> Where there are substantial questions about whether a carrier is fit to operate, the Department may issue a show-cause order proposing to deny the application. If an application raises substantive questions of fact, is controversial, or presents complex issues that cannot be resolved on the written record, the Department may direct that the matter be considered in an oral evidentiary hearing before an Administrative Law Judge. Once the application is assigned, the Judge will set a procedural schedule for exhibits, hearings, and briefs. After these procedures have been completed, the Judge will review the information submitted and the arguments on brief, and issue a recommended decision on the applicant's fitness to provide the air transportation it proposes. After the Judge issues a decision, the Department's Assistant Secretary for Aviation and International Affairs will review that recommendation and issue a final decision on the application.

before further Department action is taken. Based on these responses, the Department will then determine what further procedural steps, if any, may be warranted, such as requesting additional information from the applicant or setting the case for hearing before an Administrative Law Judge. If such further procedures are not employed, the Department will issue a final order on the merits.

In most instances, the Department will impose conditions on the applicant's authority in the final order--such as a limit on the duration of the authority (*e.g.*, for one year), on the number, type, or size of aircraft that the applicant may operate, or on the type of service that can be provided. If, at a later date, the company wishes to expand its operations beyond those limits, it would need to notify the Department and establish its fitness to do so. In addition, new carriers will be required to file a first year progress report at the end of their first year of operations. These conditions are intended to enable the Department to monitor the carrier's operations more closely, particularly during its first several years.

If an application for foreign authority is involved, the Department's final decision to grant or deny the requested authority is subject to review by the President of the United States, who has 60 days from the date the Department sends him the decision to review the action. If the Department's decision is not disapproved by the President, it will become final. Department actions on requests for interstate authority are not subject to review by the President, and are final at the time they are issued.

At the time the Department issues its final decision and award of authority, if the applicant does not hold an Air Carrier Certificate and Operations Specifications from the FAA authorizing it to conduct its proposed operations, the economic authority will not become **effective** until the applicant has received the required FAA authority and presented evidence of it to the Department. At the time it presents its FAA documents, the applicant must also supply certain updated fitness information and proof of insurance coverage (see the discussion below under “**Other Requirements**”), and meet any other conditions imposed by the Department in its final decision.

Under the Department's Regulations (section 201.5 reprinted in Part III), an applicant may *not* (1) advertise, list schedules, or accept reservations for its proposed air transportation until the Department issues its final decision on the applicant's certificate application, or (2) accept payment or issue tickets for its proposed air transportation until the certificate has been made effective by the Department. An applicant may advertise or list schedules for its proposed services between the time the Department issues its final decision on the application and the time the authority is made effective *only* if any such listings or advertisements prominently state “This service is subject to receipt of government operating authority.”

In calculating start-up time, an applicant should anticipate that the Department will require a minimum of four months to process the application beginning from the time a complete application is filed. Additional time would be required if objections are filed or complex or unusual issues are raised by the application. This estimate does not take into account the time required for completion of the Presidential review period with respect to applications for foreign authority, or to complete any necessary FAA certification work.

## EVIDENCE REQUIREMENTS

### Fitness Test

The Department uses a three-part test to determine the fitness of a company. First, it examines the managerial competence of the applicant's key personnel to determine whether they have sufficient business and aviation experience to operate an airline, and whether the management team, as a whole, possesses the background and experience necessary for the specific kind of operations proposed.

Second, it reviews the applicant's operating and financial plans to see whether the applicant has a reasonable understanding of the costs of starting its operations and either has on hand, or has a specific and verifiable plan for raising, the necessary capital to commence operations. Before being granted effective air carrier authority, the applicant must submit third-party verification that it has acquired the necessary capital to conduct its operations.

Third, the Department looks at the applicant's compliance record to see whether it and its owners and managers have a history of safety violations or consumer fraud activities that would pose a risk to the traveling public, or whether other factors indicate that the applicant or its key personnel are unlikely to comply with government laws, rules and directives.

In addition, the applicant must establish that it is owned and controlled by U.S. citizens.

The information required by Part 204 of the Department's Regulations (14 CFR 204, which is reprinted in Part III of this packet) is intended to provide the Department with a sufficient basis upon which to determine whether an applicant is qualified in each of these areas to provide the public with its proposed service.

The following pages contain a discussion of the data required by section 204.3 and which the Department routinely requests in processing certificate applications. An applicant should address each point below. If the answer to the information requested is "not applicable" or "none," please so state for each item.

Also described are some of the ***common mistakes*** made by applicants in their filings, the biggest of which is filing an incomplete application. All too often, applicants view the filing of their applications with the Department as one of the first steps towards becoming an airline, not one of the last. Thus, some applications are filed without all of the key management positions filled or when arrangements for financing have not been made or service proposals have not been finalized.

***Common mistakes*** also include not filing updated information if any changes occur in the applicant's ownership, management team, compliance history, financial position, or service proposal while its application is under review so as to render inaccurate any information or representations made previously in its application or in subsequent responses. If such changes occur, the

applicant should file promptly a supplement to its application in the assigned docket (an original and 6 copies) describing the details of any such changes. Failure to do so will result in additional delays in processing the application to completion.

## **General**

The purpose of the information described below is to provide the Department with some background on the applicant, including information on the type of service being provided currently, if any, as well as that proposed.

### ***Data Required***

1. The name, address, telephone and fax numbers of the applicant, along with the name, position, phone number and email address of the applicant's point of contact for processing the application.
2. A narrative history of the applicant.
  - a. The narrative should include when the applicant was formed and by whom, any subsequent ownership changes, the nature of the business initially and how it has changed or grown, and the primary markets currently being served.
  - b. The narrative should also indicate the type of authority being requested in the application, the markets to be served, whether additional aircraft will be required in the proposed service, and whether other changes or additions in the applicant's management team, facilities, and operations will be made if the requested authority is received.
  - c. If the applicant has or proposes to establish maintenance or operations bases separate from its corporate offices, the locations of those bases should be indicated.
  - d. If the applicant intends to contract out any maintenance, training or other operational functions, the percentage and type of such contracts should be indicated.
3. A list of the applicant's current and/or proposed fleet of aircraft, including the number and seating/cargo capacity of each type and model of aircraft and whether they are or will be owned or leased.
  - a. If the aircraft are currently leased, identify the lessor; if the aircraft will be leased, provide copies of letters of intent with the lessor.
  - b. For applicants that already operate aircraft, provide a sworn affidavit stating that each of these aircraft has been certified by the FAA and complies with all applicable FAA safety standards. For non-operating applicants, this affidavit should be submitted at the time the company's FAA documents are submitted to the Department to make its authority effective. (See Part IV of this packet for a sample of the affidavit required.)

4. A description of all authority the applicant holds or has held to conduct air transportation operations from state, federal, and foreign governments. This would include, for example, a certificate from the FAA, an air taxi registration with the Department, or a Canadian Transportation Agency license.

a. If new or additional authority is needed from the FAA in order to conduct the proposed operations, the status of any application for that authority, and the name, telephone number, and address of the FAA personnel responsible for processing that application should be provided.

b. If no additional authority is needed, the name, address, and telephone number of the applicant's FAA principal operations inspector should be included.

***Common mistakes*** in submitting background information include submitting a service proposal—with a description of the markets to be served, frequency of flights, number and type of aircraft to be used—which is inconsistent with the first year forecast of revenues and expenses provided as part of the applicant's financial documents; and failing to identify the FAA personnel responsible for the oversight of the applicant's operations and/or failing to include with its application a copy of its FAA Pre-Application Statement of Intent. (Note: By the time an application is filed with the Department for a certificate, the applicant should have also contacted its local FAA Flight Standards District Office and filed its Pre-Application Statement of Intent with that office.)

### **Corporate Structure and Ownership**

The purpose of the information described below is to provide the Department with information on the applicant's ownership structure to demonstrate that it is owned and controlled by U.S. citizens.

#### ***Data Required***

1. The form of the applicant's organization (*e.g.*, sole proprietorship, partnership, corporation, or limited liability company), the state law(s) under which the applicant is organized, and the date of incorporation or organization.

2. If the applicant is a corporation or limited liability company, a statement provided by the Office of the Secretary of State, or other agency of the state in which the applicant is organized, certifying that the applicant is a company in good standing. This statement should reflect the applicant's corporate standing not more than one month prior to the date the application is filed.

3. A sworn affidavit stating that the applicant is a citizen of the United States.<sup>10</sup> (See Part IV of this packet for a sample of the affidavit required.) If any owners, officers, directors, or

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<sup>10</sup> Section 40102(a)(15) of the Statute defines a "citizen of the United States" as: "(1) an individual who is a citizen of the United States; (2) a partnership each of whose partners is an individual who is a citizen of the

other persons who have the power to influence the applicant, whether through ownership, debt, position held, or other interest, are not U.S. citizens, state the name and citizenship of each, and describe each such person's relationship to, and interest in, the applicant. For more information about foreign interests, review the discussion of **Issues Pertaining to Non-U.S. Citizen Involvement** at the end of this section.

4. A description of the classes or types of the applicant's stock that are authorized, the number of shares of each class or type that are issued and outstanding, and the total number of shareholders of each class of stock.

5. A list of all persons (individuals or organizations) that own or control at least 10 percent of the stock of the applicant, indicating the number of voting shares and the corresponding percentage of the total shares outstanding that are held by each, along with their address, citizenship, and principal business.

a. If any stockholder is an organization, provide the name, address, citizenship, and principal business of the individuals who own or control at least 10 percent of the stock of the organization. If there are several layers of ownership by companies (*e.g.*, holding or parent companies), information on the stock ownership should be provided for each layer until the ultimate individual shareholders are reached.

b. If the applicant's stock is held by someone for the benefit or account of a third party, give the name, citizenship, and principal business of that person or organization.

c. If any of these persons are related by blood or marriage or have had any financial interest in, or serve or have served as an officer or director of any other air carrier, common carrier, or person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any aviation-related entity, that relationship should be described.

d. If any person or organization holds options to convert debt to equity or one type of stock to another type, identify the person or organization and discuss the circumstances under which such conversion may occur.

6. A list of the applicant's operating divisions and subsidiaries, if any, and of any other company (including any air carrier, common carrier, or person substantially engaged in the business of aeronautics) in which the applicant or any of the applicant's substantial owners (*i.e.*, those who own 10 percent or more of the stock) and officers (*i.e.*, the senior executives, such as Chief Executive Officer, President, Chief Operating Officer, Chairman of the Board, Vice Presidents, and General Manager) have a financial interest. The principal business of each of these entities and their relationship to the applicant should be discussed.

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United States; or (3) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned and controlled by persons that are citizens of the United States.”

**Common mistakes** in submitting ownership information include not providing enough information to account for 100 percent ownership of the applicant; not providing all required ownership information on parent or holding companies or on their parents or holding companies; not fully disclosing or discussing the role of any foreign investors in the applicant's ownership or management; and providing share ownership information based on the total number of shares *authorized*, rather than on the number of shares actually *issued and outstanding* as required.

**Issues Pertaining to Non-U.S. Citizen Involvement.** During our review of an application for certificate authority, the Department's staff will examine the company's ownership structure to determine if the applicant satisfies all statutory citizenship tests and is under the ***actual control*** of U.S. citizens. In determining actual control, we examine the facts of a particular situation to decide whether a foreign interest will have a substantial ability to influence the carrier's activities.<sup>11</sup> Some of the factors we consider are set forth below. Before submitting an application for certificate authority to the Department, each applicant should consider the following factors as they pertain to foreign interest and control:

- *What is the total amount of voting stock and equity interest that a foreign interest can hold and the carrier will still be considered a U.S. citizen?* Generally, the likelihood of foreign control increases when a foreigner holds a larger percentage of equity. In some instances, the Department has approved up to 49% total equity ownership (comprised of both voting and non-voting), but by statute foreigners cannot own, individually or in the aggregate, in excess of 25% of the voting stock.
- *In what instances has the Department approved total foreign equity interest (comprised of both voting and non-voting) in excess of 25% of the stock?* Generally speaking, foreign equity interests over 25% have only been permitted where the foreign investors have been nationals of countries with which we have open skies aviation bilaterals (liberal bilaterals in earlier orders). We note that an earlier decision, Laker Airways (Order 95-12-37), is inconsistent, has been superseded, and should not be used as guidance in these matters. Recently, the Department has further refined its policy with regard to actual control to allow, in appropriate circumstances, total foreign equity investments in excess of 25% when it was determined that the foreign investments were clearly passive and diffuse, with no suggestion of foreign control.
- *Does the foreign interest have power to veto or control the management structure, or is there a U.S. citizen interest that would tend to vitiate the foreign interest?* It is more likely that control will rest with a foreign interest where the foreign-held shares are owned by a single entity, or a group of entities acting in concert, and the U.S.-held shares are widely held, particularly if there is no commonality of interest among the U.S. shareholders. Conversely, where the U.S. shares are concentrated in a single entity or group of entities

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<sup>11</sup> Past cases include *In the matter of the citizenship of DHL Airways, Inc. n/k/a ASTAR Air Cargo, Inc.*, Order 2004-5-10, issued May 13, 2004 at 8; *Acquisition of Northwest Airlines by Wings Holdings, Inc.*, Order 89-9-51, issued September 29, 1989, at 5; *Application of Discovery Airways, Inc.*, Order 89-12-41, issued December 22, 1989, at 10; *In the matter of USAir and British Airways*, Order 93-3-17, issued March 15, 1993, at 19; and *Application of North American Airlines, Inc.*, Order 89-11-8, issued November 6, 1989, at 6.

acting in concert, the U.S. interests are more likely to be in a position to exert control over the carrier.

- *Does the foreign investor have the right to name members of the board of directors or other key managers of the company?* By statute, two-thirds of the Board of Directors must be U.S. citizens. For purposes of the statute, a director named by a foreign owner is considered “foreign” or “non-U.S. citizen”, regardless of the individual’s nationality. The Department will examine the relative numbers, duties, and responsibilities of the individual directors and managers appointed by the foreign interest. For example, if the foreign interest is empowered to name only three of ten directors, the influence may not at first appear to be controlling; however, if those three are to include the majority of the members of one or more key committees, foreign control may exist. Moreover, the ability of an investor to name a greater portion of the total directors than the ratio of its equity investment may reflect the investor’s intention to influence the strategic decisions of the company and an enhanced ability to do so.

- *Are there provisions in the agreements that would permit the foreigner to cause a reorganization of the carrier? Do the agreements include buy-out provisions of the U.S. investor/owner by either the carrier or the foreigner investor?* These provisions would permit the foreign interests to buy-out the U.S. interests at amounts that may be greater than fair market value (FMV), and may prohibit the U.S. interests from selling their interest without approval. For example, one of the agreements may specify the buy-out of the U.S. shares by the carrier or foreign interests at a set amount, such as 25% above FMV.

- *Do corporate governance provisions or agreements among shareholders give undue influence to the foreign interests?* These are the “supermajority” provisions mentioned by the Inspector General. An example of such provisions would occur if a foreign investor had the right to name one-third of the directors, and important corporate actions required 75% approval by the board. As a result, the foreign interest would have a right to veto major decisions of the rest of the board.

- *Are the U.S. citizen shareholders functioning as nominees or agents for the foreign investors?* Foreign nationals wishing to invest in U.S. airlines have on occasion proposed ownership schemes where the voting shares they wished to own or control would be held nominally by U.S. citizens, including family members, employees, business partners, attorneys, etc. In such situations, the foreign investor usually provides the funds needed to acquire the stock held by the nominee. Often, the U.S. holder has no background, knowledge, or even apparent interest in the airline industry. Even if stock ownership is not involved, U.S. citizens may be considered nominees or agents of the foreign interest if they are hired by the foreign investors for their position with the air carrier, or otherwise have a history of affiliation with the foreign interest.

- *Are there business relationships or significant contracts between a foreign investor and one or more U.S. citizen shareholders that may cause the U.S. citizen(s) to be unduly influenced by the foreign national?* Even if the U.S. citizen is not an agent or nominee of a foreign investor, it is possible for influence to be exerted if the foreign investor has other business relations with the U.S. citizen. For example, the U.S. citizen may be beholden to

the foreign investor if the foreign investor has loaned the U.S. citizen substantial sums of money for purposes unrelated to the air carrier or employs members of the U.S. citizen's family. The influence may be heightened if the loan is subject to call, or other contractual obligations.

- *Has the foreign investor loaned or guaranteed loans for the carrier or provided it with lines of credit?* The Department does not generally regard debt, taken alone, as a source of foreign control. However, loan arrangements may not include security provisions that provide avenues of control to a foreign investor. Moreover, a provider of an installment loan or line-of-credit, particularly where such funds comprise the principal operating capital of the carrier, may be able to exercise control over the carrier's operations if the lender has the ability to withhold funds or demand repayment if the carrier does not follow its instructions. In addition, under certain circumstances lenders are sometimes given options to acquire equity in the company. These circumstances, as well as the degree to which the carrier may be financially dependent on a foreign source of funds, are considered in evaluating the totality of circumstances regarding a carrier's citizenship.

- *Are there any other significant business relationships between the foreign investor and the air carrier?* If the foreign investor is an airline, tour operator, freight forwarder, or is otherwise involved in an associated business where the ability to control the carrier could give the foreigner's business a potential market advantage, the issue of foreign control will be closely scrutinized. Similarly, if the foreign investor has other significant business relationships with the air carrier, such as providing its aircraft, handling its marketing, performing other administrative functions, or providing a substantial portion of its revenues, these relationships will be considered in the totality of circumstances present.

While the above discussion covers some of the factors we have relied on in past cases, no single factor or group of factors is determinative of control, and we emphasize that this list is not exhaustive. Our decisions are based on the **totality of circumstances** presented and each case is different. Factors that can be found in case precedent may be rendered redundant, and even obsolete, by changes in the regulatory, legal, and market environments, just as those conditions could result in other factors that we have not looked at previously. Moreover, factors found to result in control in one case may not be dispositive in another case because of overriding factors not present in the earlier case, and *vice versa*.

### **Management Expertise and Technical Ability**

The purpose of this information is to demonstrate that the applicant has a sufficient number of qualified, competent management personnel with the background and experience necessary for the kind of operations being undertaken.

### ***Data Required***

The following information concerning the existing and/or prospective key management personnel<sup>12</sup> should be submitted:

1. A chart showing positions and operating divisions within the organization that depicts which positions and functions report to whom.
2. Each key personnel's position and responsibilities with the applicant and the date employed or to be employed.<sup>13</sup>
  - a. If an individual has been employed with the applicant for a number of years, indicate all positions held during that time, with the dates each position was held.
  - b. If any key personnel are employed or will be employed by the applicant on less than a full-time basis, state what percentage of the employee's time will be spent on the applicant's business, and provide details of his or her concurrent occupation(s).
3. A resume for each of the key personnel stating:
  - a. Full name, current address, and telephone numbers.
  - b. All previous employment (both aviation and non-aviation) including: name of employer, location (city, state), type of business, position held, description of responsibilities, and dates employed. If the previous employer held any aviation authority, state the type (*e.g.*, air taxi, commuter, fixed base operator, certificated air carrier). Any periods of unemployment should be accounted for.
  - c. Education and training, including names of institutions, dates attended, and any certificates or degrees received. If the person holds a certificate or license from the FAA (such as an Airline Transport Pilot certificate or Airframe & Powerplant Mechanic license), these, including their numbers, should be listed, as well as the number of recorded hours of flying time for the Chief Pilot.
4. The citizenship of each such person.
5. The amount of stock (or other interest) held in the applicant, if any, by each.

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<sup>12</sup> "Key personnel" refers to the President, Chief Executive Officer, Chief Operating Officer, General Manager, Chief Financial Officer, Vice President(s), the Director of Operations, the Director of Maintenance, the Chief Pilot, the Director of Safety, and the Chief Inspector, as well as the Chairman and members of the Board or other key officials who may not be involved with the day-to-day operation of the company but who are primary stockholders and/or whose influence on the actions or policies of the applicant is, or potentially could be, substantial.

<sup>13</sup> In addition to the key personnel noted above, if the applicant proposes to contract out any maintenance or training functions, the corporate position that will be responsible for overseeing those contracts should be identified along with the name, background, and credentials of the individual selected for this position. The applicant should also indicate to whom in the corporate structure this position will report, how the oversight will be accomplished, and whether the position is part-time or full-time.

6. A description of the officerships, directorships, stock (if 10 percent or more), or other interests each holds in any other air carrier, common carrier, or person substantially engaged in the business of aeronautics.

7. For the key technical personnel (Director of Operations, Director of Maintenance, Director of Safety, Chief Pilot, and Chief Inspector), a statement that these individuals meet the qualifications for their respective positions as set forth in sections 119.65 and 119.67 of the Federal Aviation Regulations (14 CFR 119.65 and 119.67).

**Common mistakes** in submitting management team information include not having all key managerial positions, including those required by the FAA, filled; submitting incomplete resumes that do not list employer names and the type of business conducted by that employer, dates of employment, positions held, or date the employee left his/her last position and joined the applicant; submitting resumes with no information on non-aviation employment held or periods of unemployment, thereby creating employment period gaps; not including the FAA certificate or license number for persons holding ATP or A&P certificates; and listing technical personnel who will not be accepted for their positions by the FAA.

### **Financial Position and Operating Plans**

This information will be used to assess the financial position of the applicant, whether the applicant has a reasonable understanding of the costs of starting and conducting its operations, and whether it has access to the capital required to commence operations. Before being granted an *effective* certificate, an applicant must provide independent, third-party verification that it has available to it resources (*e.g.*, cash, lines-of-credit, or bank loans) sufficient to cover all of its pre-operating costs (*i.e.*, all of the costs incurred prior to the actual commencement of flight operations) plus the operating expenses that are reasonably projected to be incurred by the applicant during three months of “normal” operations.<sup>14</sup> In determining available resources, projected revenues cannot be included.<sup>15</sup>

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<sup>14</sup> Because projected expenses during the first several months of operations do not include all costs that will be incurred during a “normal” or average period of operations, the three-month standard is calculated by dividing the applicant’s estimated total first year operating expenses by four. In addition, if the applicant’s most recent balance sheet shows a negative working capital balance for any ongoing operations (*e.g.*, air taxi, aircraft leasing, or fixed base operation), the amount of that working capital deficit will be considered a pre-operating expense in calculating the amount of funds that the applicant must have available to meet the financial fitness criteria for the proposed operations.

<sup>15</sup> This financing guideline should not be considered a “zero revenue test”; that is, an applicant should not construct an artificial three-month projection showing reduced operating costs based on the theory that if there are no revenues there will be fewer variable flight and customer-related expenses, and that a smaller capital reserve will therefore be needed.

## ***Data Required***

The following financial information about the applicant should be provided:

1. Balance sheets and income statements of the applicant and all relevant corporations,<sup>16</sup> together with their accompanying explanatory footnotes (including a description of the company's significant accounting policies, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization), for the three most recent calendar or fiscal years,<sup>17</sup> and for a period ending *no more than three months prior* to the date of filing. This requirement may be met by the submission of financial statements, preferably audited, or 10K and/or 10Q reports filed with the Securities and Exchange Commission.

a. The financial documents should include a statement as to who prepared them, his or her qualifications and relationship, if any, to the applicant, and whether they were prepared in accordance with Generally Accepted Accounting Principles.

b. If an annual audit, review, or compilation by an independent CPA is performed, the name and address of the firm, and type of services provided should be listed.

2. Statements which include a description of the following:

a. Any liens or encumbrances against any of the applicant's or any relevant corporation's assets, including those pledged as collateral for any outstanding obligations.

b. Any major commitments into which the applicant or any relevant corporation has entered during the past 6 months, or proposes to enter into during the next 6 months, including bank or other institutional financing, private financing, issuance of bonds or stock in the applicant, or major contracts to perform services.

c. Any transactions in which the applicant or any relevant corporation sold or exchanged any major assets (aircraft, land, buildings, etc.) during the past 6 months, or

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<sup>16</sup> "Relevant corporation" includes the applicant, any predecessor of the applicant (including any company whose operations were acquired by, or merged with, the applicant); any company in which the directors, principal officers or owners have or once had a substantial interest, or any organization which has a significant financial or managerial influence on the applicant, *e.g.*, (1) a parent corporation; (2) any entity that holds more than 50 percent of the outstanding voting stock of the applicant; (3) any entity that holds between 20 and 50 percent of such stock and which has significant influence over the applicant as indicated, for example, by at least a 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies; and (4) any subsidiary of the applicant. However, unless specifically requested by the Department, an applicant need *not* include financial data for those companies that are "relevant corporations" **only** because one or more of the applicant's directors, principal officers or owners have or once had a substantial interest in them.

<sup>17</sup> If an applicant has been in business less than three years, only information for as long as it has been in business is required, unless there is a predecessor company. In the latter instance, information on the predecessor company is necessary. For new companies (those without any prior operations), a pre-operating balance sheet giving a complete description of the financial resources available to mount the proposed services should be filed.

plans to sell or exchange within the next 6 months, including how any funds realized from those transactions were, or are intended to be, used.

d. Any liabilities of the applicant or any relevant corporation that are more than 60 days past due at the time of the application, including the amount and the circumstances under which they are past due and will be paid.

e. Any contingent liabilities that may have an effect on the applicant's or any relevant corporation's financial posture (*e.g.*, lawsuits, pending judgments), including plans to meet those obligations.

f. Any events that occurred after the preparation of the most recent financial statements that may have a significant impact on the financial position or on the operations of the applicant or any relevant corporation. If no such events have occurred, provide a statement to that effect.

3. The applicant's service proposal and a forecast balance sheet and profit and loss statement (broken down by month or by quarter) for the first twelve full months of actual flight operations conducted under the certificate authority at issue. These documents should include ample notes explaining the basis for the amounts shown and whether the statements were prepared on a cash or accrual basis. The description should be in sufficient detail to allow the Department's staff to replicate the mathematics involved and to determine the reasonableness of the forecast.

The revenue forecast should indicate:<sup>18</sup>

a. For applicants for *scheduled* authority, the proposed markets and number of daily flights in each market; for applicants for *charter* authority, the types of charters to be operated (*e.g.*, public, single-entity, wet lease, Department of Defense) and the proposed geographic areas to be served.

b. The type, model, seating/cargo capacity, and number of the aircraft to be used.

c. The number of passengers or amount of cargo to be carried and expected load factors.

d. The fares or rates to be charged, and the resulting gross revenues.

e. The total number of revenue block hours and revenue miles expected to be flown, and the extent of any seasonal traffic peaks.

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<sup>18</sup> If the applicant so requests under 14 CFR 302.12, the Department will generally grant confidential treatment to information identifying the specific markets to be served, proposed frequency of service, fares, estimated revenue passenger miles and available seat miles, and projected load factor. However, if the applicant requests confidential treatment of information identifying its proposed markets and related traffic forecasts, it must provide for the public record a brief description of the type of markets/cities to be served (*i.e.*, short-, medium-, or long-haul markets, from small, mid-size, or large cities) and the total number of flights and revenue block hours to be performed.

The expense data should show:

- a. Detail by expense category (direct and indirect), indicating how the amounts were computed. Applicants proposing to operate more than one aircraft type or model should include separate estimates of expenses for training, maintenance, preparation of manuals, etc., for each aircraft type or model.
  - b. For indirect expenses, if the applicant is engaged in other aviation-related operations (*e.g.*, aircraft leasing or repair station), expenses should be allocated on a rational basis between the proposed certificated operations and the other operations, with appropriate explanations. The applicant should prepare a consolidated forecast income statement for the entire business as well as separate forecast statements for each operating segment, including the proposed certificated operation.
  - c. If aircraft or other facilities are to be acquired to conduct the proposed services, a description of the plans for obtaining and financing those items should be provided.
4. An estimate of the amount of capital the applicant will need to commence operations which shows the basis of the estimate (*e.g.*, the amounts for pre-operating costs, including aircraft deposits or leases, office and hangar space, insurance, salaries, training, FAA and Department certifications, working capital, etc.).
5. A description of the proposed form and source of capital to support the applicant's operations.
- a. If the resources of an individual(s) or other organization(s) will be made available to the applicant to support its operations, provide a statement from such individual(s) or organization(s) of the amount of such available resources and the terms or conditions under which such funds will be provided. Copies of the personal or corporate financial statements of the individual(s) or organization(s) should also be provided. Such documentation should clearly establish the capability of the individual(s) or organization(s) to fulfill any financial commitment made to or on behalf of the applicant. In this connection, the liquidity of any assets, other than cash, contained in these documents should be made clear through appropriate footnotes (*e.g.*, the current market value of stocks and bonds that can be readily converted to cash should be noted). Whenever possible, third-party verification of the assets and values should be provided (*e.g.*, letters from banks or stockbrokers holding liquid assets, or recent appraisals of real assets).
  - b. If borrowed capital or a line-of-credit is to be employed, the total amount, current balance, source, security, provisions to convert the debt to equity, and terms of repayment to the lender should be stated. Verification of this information from the lender should be provided.
  - c. If financing is to be obtained through a private stock offering, verification from the underwriter as to the status of the offering should be provided and copies of private placement agreements or offering documents should be submitted. If capital is to be

sought through a public stock offering, copies of the offering documents filed with the Securities and Exchange Commission should be included.

- d. A letter from the applicant's bank confirming the amount on deposit and bank loans and lines-of-credit, if any, should be provided.
6. A description of all outstanding judgments against the applicant, relevant corporations, key personnel employed by each, or any person having a substantial interest in the applicant.
    - a. For judgments of more than \$5,000, include a brief summary of the circumstances leading to each judgment, the amount of each judgment, the party to whom it is payable, how long it has been outstanding, and its current status.
    - b. For judgments of less than \$5,000, the list need only identify the company or person involved and the total amount of the judgment still owed.

**Common mistakes** in submitting operating plans and financial information include not having a firm plan for obtaining the necessary financial resources; not submitting third-party verification of available or proposed funds; not submitting current (*i.e.*, to within three months) financial statements; not including enough notes in the financial statements to understand what the entries represent (*e.g.*, an amount for fixed liabilities without detailing what those liabilities are); and not including all expected forecast expenses or enough details to enable the Department to replicate the calculations used in arriving at the cost and revenue estimates (*e.g.*, a single figure for “salaries” without detailing whose salaries at what amounts are included).

### **Compliance Disposition**

The purpose of evaluating compliance disposition is to assure that the company and the personnel running and controlling the company do and will abide by the laws, rules, and regulations governing the applicant's operations and that management will be diligent in maintaining safe operations.

### ***Data Required***

The following information about the compliance history of the applicant, its owners, related companies, and their key personnel should be filed:

1. A description of the current status of all pending enforcement actions and formal complaints<sup>19</sup> involving the Statute, and the rules and regulations of the Department, including the FAA, involving the applicant, its key personnel (employed or to be employed), relevant corporations, including any other company in which the directors, principal

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<sup>19</sup> Although the applicant is not required to specifically report enforcement actions that have been closed, the Department may request additional information on such actions, particularly if they involved an FAA certificate action or voluntary suspension of operations or other serious charges against the applicant or any of the persons or companies listed above.

officers, or owners of the applicant have or once had a substantial interest, or persons having a substantial (*i.e.*, 10 percent or more) interest in any of these companies.<sup>20</sup>

The investigation, complaint or action should be identified, together with a brief summary of the circumstances involved and its current status.<sup>21</sup> By “actions” or “complaints,” we mean those that have actually been filed with or taken by some official agency such as the Department, including the FAA, or a state, irrespective of whether the company or person believes it was or is guilty. For example, if the FAA has proposed a civil penalty in an enforcement action against a company, that FAA action must be reported.

2. If any of the persons listed in paragraph 1 above were affiliated (as an officer, director, or stockholder) with any air carrier or other aviation-related company which, at the time of such affiliation, was found to have committed knowing, willful violations of the Statute or any order, rule or regulation issued pursuant to that Statute, such actions should be described.

3. A description of any charges (civil or criminal) within the past 10 years brought against any of the persons or companies listed above, of fraud, felony, or antitrust violations, or of unfair, anticompetitive or deceptive business practices, including their final disposition or current status.

4. A description of any aviation-related accidents or incidents which the applicant, its personnel, or any relevant corporation has had either during the year preceding the date of the application, or at any time in the past if the matter remains under investigation by the FAA, the NTSB, or by the company itself. This includes:

a. The date of the occurrence, the type of flight (Part 121, Part 135, etc.), the number of passengers on board, the extent of injuries to persons and damage to the aircraft, the name of the pilot, and any other pertinent information available. Copies of the pilot's reports, if available, should be filed.

b. The FAA and the NTSB file numbers, if known, for each accident and incident, and the findings of the NTSB and/or the FAA, including any violations cited against the company or any of its personnel.

c. A description of any positive actions taken by the company as a result of the occurrence, if any was appropriate.

**Common mistakes** in submitting compliance information include not disclosing all required or relevant compliance matters. Applicants should consider any matter relating to safety violations or consumer fraud activities

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<sup>20</sup> Pending cases against a company in which the directors, principal officers or owners of the applicant *once had* a substantial interest need only be reported if these cases were opened for actions that occurred while the individual(s) identified held ownership and/or key positions with that company.

<sup>21</sup> Special attention should be paid to the Directors of Maintenance, Operations, and Safety and the Chief Pilot and Chief Inspector, as persons holding these positions are more likely than others to be cited for FAA violations.

involving the applicant, its principals or key personnel or companies in which those individuals have or had a substantial interest (either ownership or management) as relevant and reportable. **In most instances, the failure to disclose the information is far more damaging than the matter being disclosed, since it is likely to cause delays in processing the application or even the dismissal or denial of the application for providing false or misleading information about the compliance background of the applicant and its principals.**

### **Certification**

The following certification must be included in all written submissions filed by the applicant in connection with its application:

Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant*], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

### **OTHER REQUIREMENTS**

#### **Accident Plans**

Section 41113 of the Statute requires certificated air carriers to develop and submit to the Department and the National Transportation Safety Board a plan (“accident plan”) to address the needs of families of passengers and other victims involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life. (See the copy of the Aviation Disaster Family Assistance Act of 1996 included in Part III of this packet.) The requirement to file an accident plan applies not only to passenger carriers but also to all-cargo carriers, which must file a plan to cover any employee or third-party accident victims, such as cargo attendants, non-revenue passengers, or persons on the ground. Section 41113(b) of the Statute describes the specific contents of the accident plans. The accident plan to be submitted to the Department should be filed separately in Docket OST-96-1960 and should *not* be included in the application for certificate authority, although a statement that the plan has been so filed should be included. The copy to be submitted to the National Transportation Safety Board should be sent to the following address:

Office of Public Affairs  
National Transportation Safety Board  
490 L’Enfant Plaza East, SW  
Washington, DC 20594

Please note that the Department cannot issue an applicant any requested certificate authority unless it has complied with this requirement.

### **Passenger Manifest Information**

Part 243 of the Department's regulations (see copy included in Part III of this packet) was adopted to ensure that the United States Government has prompt and adequate information in case of an aviation disaster occurring on a covered international flight segment. A "covered flight segment" is defined in section 243.3 as:

"a passenger-carrying flight segment operating to or from the United States (*i.e.*, the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States."

The rule requires that all certificated air carriers collect the full name of each U.S. citizen passenger traveling on such flight segments, and solicit a contact name and telephone number. In the case of an aviation disaster, the carrier involved would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. The Part 243 requirements apply not only to passenger carriers but also to all-cargo carriers, since they could transport cargo handlers and other persons meeting the definition of "passenger" in section 243.3.

Section 243.13 requires that each certificated air carrier that operates one or more covered flight segments file with the Department in Docket OST-98-3305 a brief statement summarizing how it will collect the passenger manifest information and transmit it to the Department of State following an aviation disaster. If the certificate authority sought would authorize the applicant to operate a covered flight segment, even though there may be no immediate plans to do so, the applicant should file the summary statement required by section 243.13. If the applicant does not intend to operate any covered flight segments in the foreseeable future, the applicant must file in Docket OST-98-3305 a statement so stating, and also stating that the applicant will not operate any covered flight segment unless and until it has filed the summary required by section 243.13. The statement or summary to be submitted to the Department should be filed separately in Docket OST-98-3305 and should *not* be included in the application for certificate authority, although a statement that the information complying with Part 243 has been so filed should be included. Summaries already filed by air carriers under section 243.13 are available for public inspection in Docket OST-98-3305, and on the Internet at <http://dms.dot.gov>. The applicant may wish to review these summaries for ideas on how it can best implement the data collection requirements of Part 243.

### **Insurance and Limits of Liability**

Prior to conducting any operations, an air carrier must also meet the insurance requirements set forth in Part 205 of the Department's rules, and become a signatory to the Interim Agreement of carriers, which relates to higher limits of liability for international passengers.

This latter requirement applies whether or not the applicant is seeking a certificate to provide foreign air transportation. (Part 205 is reprinted in Part III of this packet. Blank copies of the Certificate of Insurance (OST Form 6410) and the Interim Agreement (OST Form 4523) are in Part IV of this packet. OST Form 4523 should be filed (an original plus three copies) separately with the Department's Dockets Section in Docket 17325, *i.e.*, not assembled as part of or an exhibit to the application.)

### **Name/Tradename Registration**

Air carriers may only hold out services to the public using names authorized by the Department as listed on its certificate or as otherwise approved in a written notice. Part 215 of the Department's rules contains the procedures to be followed in order to change the carrier's name as shown on its certificate or to add a new trade name. (A copy of Part 215 is included in Part III of this packet.) Applications to change the name on the certificate--due, *e.g.*, to a change in the carrier's corporate name--should be filed with the Department of Transportation Dockets; however, if the name on the certificate is not to be changed--due, *e.g.*, to the addition of a trade name--the filing should be made with the Air Carrier Fitness Division. A \$56.00 filing fee should accompany either type of filing. The Department will notify the applicant of any other air carriers that have already registered the same or a similar name. It is then the applicant's responsibility to notify any such carriers of its intent to register the new name and then to certify to the Department that it has performed this notification. The Department will then issue a notice registering the new trade name or an order reissuing the carrier's certificate. While the Department may prohibit the use of names that may be deceptive or that may otherwise result in significant public confusion, as a general rule, the Department does not intervene in company disputes over the use of names. Such disputes should be resolved between the affected parties with reference to the appropriate trademark laws.

### **CONTINUING FITNESS**

Once a company has been found fit initially, it becomes subject to the requirements of 49 U.S.C. 41110(e) which provide that the company must remain fit in order to continue to hold its authority to provide air transportation services.

### **Operating Limits**

In order to ensure that a company remains fit after it is given effective authority, the Department may impose conditions on the company's operations--such as a limit on the duration of the authority (*e.g.*, for one year), on the number, type, or size of aircraft that the applicant may operate, or on the type of service that can be provided. If, at a later date, the company wishes to expand its operations beyond those limits, it would need to notify the Department and establish its fitness to do so. These conditions are intended to enable the Department to monitor the carrier's operations more closely, particularly during its first several years.

## **First Year Progress Report**

New carriers will be required to file a progress report at the end of their first year of operations. This report should include information on the company's current operations (including aircraft fleet, principal markets served, total number of employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operation during its second year, current financial statements (including a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date), and information on whether the company has undergone any changes in ownership or management. The report will be due within 45 days after the end of the first year of operations.

## **Substantial Changes**

If, after the commencement of air service, substantial changes are planned or occur, such as a change in ownership, a major change in the management team, a major expansion in operations (*e.g.*, going from the use of "small" to "large" aircraft), or a filing for protection from creditors under Chapter 11 of the U.S. Bankruptcy Code, the Air Carrier Fitness Division must be notified promptly so it may determine whether the company will remain fit to operate. In the case of a proposed change in ownership, restructuring, or recapitalization, carriers are requested to provide a notification thirty (30) days in advance of the scheduled closing. Also, in such cases, the carrier should review the discussion of **Issues Pertaining to Non-U.S. Citizen Involvement** under the **Corporate Structure and Ownership** section in Part I of this information packet to identify potential fitness complications due to any foreign interests in the carrier. After receiving the company's description of the proposed substantial change, the staff of the Air Carrier Fitness Division will inform the company what additional information it must file to support its fitness to continue operating in light of the proposed change.

## **Dormancy**

If a carrier does not institute air transportation operations within one year of being found fit by the Department to do so, its economic authority will be terminated for reason of dormancy as provided in section 204.7(a) of the Department's Regulations. (See section 204.7 contained in Part III of this packet.)

On the other hand, if a carrier starts its air service within one year and subsequently ceases that service, its economic authority is automatically suspended and it has one year from the date of the cessation to resume service or that authority will be terminated for dormancy (see section 204.7(b)). Any carrier proposing to resume service within the one-year period must file with the Department's Dockets Section (an original and 6 copies), at least 45 days before the date on which service is expected to resume, a notice of such intent and updated fitness information as required by section 204.3. The carrier may not recommence service unless and until it is authorized to do so by the Department. If the carrier wishes to resume air service in less than 45 days, it may request a waiver from the 45-day advance notice requirements of section 204.7. Any such waiver request must be filed with Dockets (an original and 6 copies) and be accompanied by a \$280 filing fee.

If, however, the carrier will not be able to commence or recommence operations before the end of its one year, it may request a waiver from the revocation provisions of section 204.7. Such waivers are not granted routinely, but only where “good cause” is shown. In showing good cause, the company would have to provide adequate evidence that it still meets the Department's fitness criteria and that it has completed nearly all of the steps to initiate or resume operations (*e.g.*, has the necessary personnel, financial resources, and aircraft, and has resolved any problems with the FAA). The waiver request must be filed before the end of the one-year dormancy period with the Department’s Dockets Section (an original and 6 copies) and be accompanied by a \$280 filing fee. (Sample applications are contained in Part II of this packet.)

### **Transfer of Authority**

Certificates are not transferable without prior Department approval. Applications for transfer of certificate authority should be filed jointly by the transferor and the transferee with the Department’s Dockets Section at least three months in advance of the proposed effective date of the transfer. Additional time would be required if objections are filed or complex or unusual issues are raised by the application. Applicable filing fees are \$290 (interstate authority) and \$255 (foreign authority). Under section 41105 of the Statute, in order to approve a transfer, the Department must find that the proposed transfer is “consistent with the public interest,” that is, that the transferee is fit to conduct the proposed operations. The Department must also analyze the effects of the transfer on (1) the viability of each carrier involved in the transfer, (2) competition in the domestic airline industry, and (3) the trade position of the United States in the international air transportation market. Applicants for a certificate transfer should describe the circumstances of the transfer, attach evidence supporting the fitness of the transferee as set forth in section 204.3, and provide sufficient information to enable the Department to analyze the effects of the transfer as noted above. In addition, a balance sheet for the air carrier immediately prior to and immediately following the projected closing date of the transfer, as well as copies of all agreements between the transferor and transferee, should be filed. (A sample application is contained in Part II of this packet.)

\*\*\*\*\*



## PART II

### SAMPLE APPLICATIONS

The following are sample applications which may be used as guides in preparing (1) an application for air carrier authority, (2) a motion to withhold information from public disclosure, (3) a notice of intent to resume service following a cessation of operations, (4) an application for a waiver from the 45-day advance filing requirement of 14 CFR 204.7 to resume service, (5) an application for a waiver from the revocation-for-dormancy provisions of 14 CFR 204.7, and (6) an application for the transfer of certificate authority. The information in the brackets [ ] should be filled in or deleted as appropriate. For example, an applicant requesting interstate charter authority under section 41102 of the Statute would delete the references to foreign and scheduled authority.

Material in support of the applicant's fitness should be submitted as exhibits or attachments to the application. Each exhibit or attachment should be identified by number (for example, Exhibit 1, Exhibit 2, etc.) and each page of an exhibit should be numbered consecutively. If an applicant is seeking both interstate and foreign authority, the evidence in support of the applicant's fitness to operate need only be included with one of the applications and incorporated by reference in the other.

Sample Application for Air Carrier Authority

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under  
49 U.S.C. 41102 to engage in [interstate] [foreign] [scheduled]  
[charter] air transportation

DOCKET [*will be  
completed by DOT*]

APPLICATION OF  
[NAME OF APPLICANT]

Communications with respect to this document should be sent to:

*[Name, mailing address, telephone and  
fax numbers, and email address of  
persons to be contacted]*

*[Date of Application]*

Notice: Any person who wishes to support or oppose this application must file an answer by  
*[21 days after receipt of the application by the Department of Transportation]* and serve that  
answer on all persons served with this application.



BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under  
49 U.S.C. 41102 to engage in [interstate] [foreign] [scheduled]  
[charter] air transportation

DOCKET [will be  
completed by DOT]

APPLICATION OF  
[NAME OF APPLICANT]

[Name of Applicant] submits this application for a certificate of public convenience and necessity authorizing [interstate]/[foreign] [scheduled]/[charter] air transportation pursuant to section 41102 of Title 49 of the United States Code (“the Statute”).

In support of its application [Name of Applicant] states the following:

Applicant is a [corporation] [partnership] [sole proprietorship] [limited liability company] organized on [date] under the laws of the State of \_\_\_\_\_. Its address, telephone and fax numbers, and email are: \_\_\_\_\_

Applicant is a citizen of the United States as defined in section 40102(a)(15) of the Statute.

*[Describe the ownership of the applicant and indicate whether its officers, directors, and key personnel are U.S. citizens. If not, indicate their nationality and their relationship to, or interest in, the applicant.]*

Applicant is [newly formed] [currently engaged in (describe current business)].

Applicant requests authority to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation of persons, property, and mail as follows:\*

*[Describe proposed operations, including markets to be served, and aircraft to be used.]*

Information in support of the applicant's fitness to conduct the proposed air transportation operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

---

\* The applicant does not have to request authority to carry persons, property, and mail. It may request passenger only, cargo only, mail only, passenger and cargo, passenger and mail, or cargo and mail authority.

*[If applying for both interstate and foreign authority, add the following paragraph to the application for foreign authority:*

Concurrently, applicant is seeking authority to engage in interstate air transportation. Information in support of the applicant's fitness to operate has been included with that application and is incorporated by reference here. Additional information in support of the applicant's proposed foreign air transportation operations is included as *[Exhibits]/ [Attachments]* 1 through \_\_\_\_.

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I *[the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant]*, in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

**Sample Certificate of Service**

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing application for [interstate]/[foreign] [scheduled]/[charter] air transportation authority by first class mail, postage prepaid, upon the persons shown in the following service list.

[Signature and title]

[Date of Service]

SERVICE LIST

[See section 302.203(b) included in Part III.]



**Sample Motion for Confidential Treatment of Documents**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under  
49.U.S.C. 41102 to engage in [interstate]/[foreign] [scheduled]/  
[charter] air transportation

DOCKET [will be  
completed by DOT]

MOTION OF [NAME OF APPLICANT]  
TO WITHHOLD INFORMATION FROM PUBLIC DISCLOSURE

Communications with respect to this document should be sent to:

*[Name, mailing address, telephone and  
fax numbers, and email address of  
persons to be contacted]*

*[Date of Application]*

Notice: Any person who wishes to support or oppose this application must file an answer by  
*[7 days after receipt of the application by the Department of Transportation]* and serve that  
answer on all persons served with this filing.



BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under 49.U.S.C. 41102 to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation

DOCKET [will be  
completed by DOT]

MOTION OF [NAME OF APPLICANT]  
TO WITHHOLD INFORMATION FROM PUBLIC DISCLOSURE

Pursuant to section 302.12 of the Department's Rules of Practice, [name of applicant] hereby moves to withhold from public disclosure [specify material to be withheld, e.g., Exhibits 2, 5 and 7 to the above-captioned application for the issuance of certificate authority]. These documents are being filed with this Motion in a sealed envelope marked "Confidential Materials - Rule 12 Treatment Requested." In support of this Motion, [name of applicant] submits the following:

*[For each document for which non-disclosure is requested, describe the document in general terms (e.g., the applicant's internal business or marketing plan, letter of intent from aircraft lessor, shareholder agreement, personal financial statements of owner or lender).]*

The information [name of applicant] seeks to withhold from public disclosure is (1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential. Moreover, release of this information would cause substantial harm to the competitive position of [name of applicant] or the individual from whom the information was obtained.

*[Explain how the information for which non-disclosure is requested falls into one or more of the categories discussed in the preceding paragraph, e.g., "Exhibit 3 contains sensitive financial and commercial information, including proprietary details of the applicant's marketing research, that could be used by competitors to impede the applicant's plans to undertake the proposed air service. Moreover, the information in this exhibit is highly detailed and would not otherwise be made accessible to persons outside the company."]*

Therefore, this information should be afforded confidential treatment by the Department.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service and information for which confidential treatment is requested, which shall be attached to the motion in a sealed envelope with the name of the applicant, authority requested, docket number, and the notation: “Confidential Materials - Rule 12 Treatment Requested.”]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing motion for confidential treatment by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See section 302.203(b) included in Part III—same persons as the certificate application.]*

**Sample Notice of Intent to Resume Service**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Notice of

[NAME OF CARRIER APPLICANT]

of its intent to resume [*interstate*]/[*foreign*] [*scheduled*]/  
[*charter*] air transportation following a cessation of operations  
pursuant to 14 CFR 204.7

DOCKET [*will be  
completed by DOT*]

NOTICE OF  
[NAME OF CARRIER APPLICANT]

Communications with respect to this document should be sent to:

[*Name, mailing address, telephone and  
fax numbers, and email address of  
persons to be contacted*]

[*Date of Notice*]



BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Notice of

[NAME OF CARRIER APPLICANT]

of its intent to resume [interstate]/[foreign] [scheduled]/  
[charter] air transportation following a cessation of operations  
pursuant to 14 CFR 204.7

DOCKET [will be  
completed by DOT]

NOTICE OF  
[NAME OF CARRIER APPLICANT]

Pursuant to section 204.7 of the Department's regulations, [Name of Applicant] submits this notice of its intent to resume [interstate]/[foreign] [scheduled]/[charter] air transportation under section 41102 of Title 49 of the United States Code ("the Statute"), following a cessation of operations.

*[Describe the authority held by the applicant, the circumstances surrounding the cessation of operations, and the proposed recommencement of operations.]*

Information in support of the carrier's fitness to resume the proposed air transportation operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[Describe any changes in the carrier's ownership and management since its latest fitness review, and list all current owners and managers and their positions. Describe the proposed markets to be served, aircraft to be used, and any changes in operations being made since the cessation. Provide current financial statements, a one-year forecast, and updated compliance information.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing notice of intent to resume certificated operations pursuant to 14 CFR 204.7 by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

### SERVICE LIST

*[See section 302.203(b) included in Part III.]*

**Sample Waiver of the 45-day Advance Filing Requirements of 14 CFR 204.7**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF CARRIER APPLICANT]

for a waiver of the 45-day advance filing requirements of 14 CFR 204.7 and notice of intent to resume [interstate]/[foreign] [scheduled]/[charter] air transportation following a cessation of operations

DOCKET [will be  
completed by DOT]

APPLICATION OF  
[NAME OF CARRIER APPLICANT]

Communications with respect to this document should be sent to:

*[Name, mailing address, telephone and  
fax numbers, and email address of  
persons to be contacted]*

*[Date of Application]*

Notice: Any person who wishes to support or oppose this application must file an answer by [15 days after receipt of the application by the Department of Transportation] and serve that answer on all persons served with this filing.



BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF CARRIER APPLICANT]

for a waiver of the 45-day advance filing requirements of 14 CFR 204.7 and notice of intent to resume [interstate]/[foreign] [scheduled]/[charter] air transportation following a cessation of operations

DOCKET [will be  
completed by DOT]

APPLICATION OF  
[NAME OF CARRIER APPLICANT]

[Name of Carrier Applicant] submits this application for a waiver of 14 CFR 204.7 so that it may resume [interstate]/[foreign] [scheduled]/[charter] air transportation operations within 45 days of the date of this filing.

In support of its application [Name of Applicant] states the following:

*[Describe the authority held by the applicant, the circumstances surrounding the cessation of operations, the proposed recommencement of operations, and why the Department should grant the waiver and allow the resumption of service on short notice.]*

Information in support of the carrier's fitness to resume the proposed air transportation operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[Describe any changes in the carrier's ownership and management since its latest fitness review, and list all current owners and managers and their positions. Describe the proposed markets to be served, aircraft to be used, and any changes in operations being made since the cessation. Provide current financial statements, a one-year forecast, and updated compliance information.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is

found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing 45-day waiver and notice of intent to resume certificated operations pursuant to 14 CFR 204.7 by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See section 302.203(b) included in Part III.]*

**Sample Waiver of the Revocation-for-Dormancy Provisions of 14 CFR 204.7**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF CARRIER APPLICANT]

for a waiver and extension of the revocation for dormancy provisions of 14 CFR 204.

DOCKET [*use Docket assigned to initial application*]

APPLICATION OF  
[NAME OF CARRIER APPLICANT]

Communications with respect to this document should be sent to:

*[Name, mailing address, telephone and fax numbers, and email address of persons to be contacted]*

*[Date of Application]*

Notice: Any person who wishes to support or oppose this application must file an answer by *[15 days after receipt of the application by the Department of Transportation]* and serve that answer on all persons served with this filing.



BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF CARRIER APPLICANT]

for a waiver and extension of the revocation for dormancy provisions of 14 CFR 204.7

DOCKET [use Docket assigned to initial application]

APPLICATION OF  
[NAME OF CARRIER APPLICANT]

[Name of Carrier Applicant] submits this application for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7 and for an extension of the one-year period in order to [commence][recommence] operations.

In support of its application [Name of Applicant] states the following:

*[Describe the authority held by the applicant, the circumstances surrounding the cessation of operations or the applicant's attempts to commence operations (whichever is applicable), why the waiver is needed, how much additional time the applicant needs before operations can start or resume, and why the Department should grant the waiver.]*

*[If the applicant is also filing a notice of intent to commence or recommence commuter operations:]* Information in support of the applicant's fitness to [commence]/[recommence] scheduled passenger operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[Describe any changes in the carrier's ownership and management since its latest fitness review, and list all current owners and managers and their positions. Describe the proposed markets to be served, aircraft to be used, and any changes in operations being made since the cessation. Provide current financial statements, a one-year forecast, and updated compliance information.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized

representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing waiver/extension of the revocation-for-dormancy provisions of 14 CFR 204.7 by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See section 302.203(b) included in Part III.]*

**Sample Application for the Transfer of Air Carrier Certificate Authority**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Joint Application of

[NAME OF TRANSFEROR APPLICANT]

and

[NAME OF TRANSFEREE APPLICANT]

for the transfer of a certificate of public convenience and necessity under 49 U.S.C. 41102 to engage in [*interstate*]/ [*foreign*] [*scheduled*]/ [*charter*] air transportation

DOCKET [*will be completed by DOT*]

APPLICATION OF  
[NAME OF APPLICANTS]

Communications with respect to this document should be sent to:

*[Name, mailing address, telephone and fax numbers, and email address of persons to be contacted for each of the joint applicants.]*

*[Date of Application]*

Notice: Any person who wishes to support or oppose this application must file an answer by [*21 days after receipt of the application by the Department of Transportation*] and serve that answer on all persons served with this application.



BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Joint Application of

[NAME OF TRANSFEROR APPLICANT]

and

[NAME OF TRANSFEREE APPLICANT]

for the transfer of a certificate of public convenience and necessity under 49 U.S.C. 41102 to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation

DOCKET [will be  
completed by DOT]

APPLICATION OF  
[NAME OF APPLICANTS]

[Names of Applicants] submit this application for the transfer to [Name of Transferee] of the certificate(s) of public convenience and necessity issued to [Name of Transferor] by Order(s) [CAB or DOT Order Number(s)] on [date] authorizing [Name of Transferor] to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation pursuant to section 41102 of Title 49 of the United States Code (“the Statute”).

In support of its application [Names of Applicants] state the following:

*[Describe the circumstances of the proposed transfer and reasons why the Department should approve it as being in the public interest. Include a discussion of the effects of the transfer, if any, on (1) the viability of each carrier involved in the transfer, (2) competition in the domestic airline industry, and (3) the trade position of the United States in the international air transportation market.]*

Information in support of [Name of Transferee]’s fitness to conduct the proposed air transportation operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[The following certification should be signed by a representative of the transferor and the transferee.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the

preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title with Transferor]*

*[Signature and Title with Transferee]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing transfer application by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See section 302.203(b) included in Part III.]*



**PART III**

**APPLICABLE DEPARTMENT OF TRANSPORTATION REGULATIONS**

**CFR Parts 200, 201, 203, 204, 205, 206, 215, 243, 298, and 302  
and Aviation Disaster Family Assistance Act**

## PART 200--DEFINITIONS AND INSTRUCTIONS

Sec.

200.1 Terms and definitions.

200.2 Instructions.

### Sec. 200.1 Terms and definitions.

Unless otherwise specifically stated, words and phrases other than those listed in this section have the meaning defined in the Statute.

(a) *Board or CAB* means the Civil Aeronautics Board.

(b) *Department or DOT* means the Department of Transportation.

(c) *Act* means the Federal Aviation Act of 1958, as amended.

(d) *Section* refers to a section of the Statute or a section of the regulations in this chapter, as indicated by the context. The terms this section, pursuant to this section, in accordance with the provisions of this section, and words of similar import when used in this chapter refer to the section of this subchapter in which such terms appear.

(e) *Rule, regulation, and order* refer to the rules, regulations, and orders prescribed by the Board or the Department pursuant to the Statute.

(f) *Statute* when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

(g) *FAA* means the Federal Aviation Administration, U.S. Department of Transportation.

(h) *BTS* means the Bureau of Transportation Statistics, U.S. Department of Transportation.

### Sec. 200.2 Instructions.

The regulations of the Department may be cited by section numbers. For example, this regulation may be cited as "Sec. 200.2 of the Aviation Economic Regulations." The sections contained in the Rules of Practice may also be cited by appropriate rule numbers. (See Sec. 302.1(c) of this chapter.) For example, 14 CFR 302.10 may be cited as "rule 10 of the Rules of Practice."

## **PART 201--AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES CODE**

### **Subpart A--Application Procedures**

Sec.

201.1 Formal requirements.

201.2 Amendments.

201.3 Incorporation by reference.

201.4 General provisions concerning contents.

201.5 Advertising and sales by applicants.

### **Subpart B--Certificate Terms, Conditions, and Limitations**

201.6 Applicability.

201.7 General certificate conditions.

### **SUBPART A--APPLICATION PROCEDURES**

#### **Sec. 201.1 Formal requirements.**

(a) Applications for certificates of public convenience and necessity under section 41102 of the Statute and for interstate all-cargo air transportation certificates under section 41103 of the Statute shall meet the requirements set forth in part 302 of this chapter as to general requirements, execution, number of copies, service, and formal specifications of papers.

(b) Any person desiring to provide air transportation as a commuter air carrier must comply with the registration provisions of part 298 of this chapter and submit data to support a fitness determination in accordance with part 204 of this chapter. An executed original plus two (2) true copies of the fitness data shall be filed with DOT Dockets, PL-401, 400 7<sup>th</sup> Street, SW, Washington, DC 20590-0002. Requests for confidential treatment of documents should be filed in accordance with the requirements of part 302 of this chapter.

#### **Sec. 201.2 Amendments.**

If, after receipt of any application, the Department asks the applicant to supply additional information, such information shall be furnished in the form of a supplement to the original application.

#### **Sec. 201.3 Incorporation by reference.**

Incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

#### **Sec. 201.4 General provisions concerning contents.**

(a) All pages of an application shall be consecutively numbered, and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

(b) All amendments to applications shall be consecutively numbered and shall comply with the requirements of this part.

(c) Requests for authority to engage in interstate air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation under section 41102 of the Statute shall not be included in the same application with requests for authority to engage in charter air transportation under section 41102 of the Statute or with requests

for authority to engage in interstate all-cargo air transportation under section 41103 of the Statute.

(d) Each application shall specify the type or types of service (passengers, property or mail) to be rendered and whether such services are to be rendered on scheduled or charter operations.

(e) Each application for foreign scheduled air transportation shall include an adequate identification of each route for which a certificate is desired, including the terminal and intermediate points to be included in the certificate for which application is made.

(f) Each application shall give full and adequate information with respect to each of the relevant filing requirements set forth in part 204 of this chapter. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Department fully with the particular circumstances of its case; however, the statements contained in an application shall be restricted to significant and relevant facts.

#### **Sec. 201.5 Advertising and sales by applicants.**

(a) An applicant for new or amended certificate or commuter air carrier authority shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Department; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the authority or amended authority has become effective or the Department issues a notice authorizing sales.

(b) An applicant for new or amended certificate or commuter air carrier authority may not advertise or publish schedule listings for the air transportation covered by its application after the application has been approved by the Department (but before all authority issued by DOT, including the FAA, becomes effective) unless such advertising or schedule listings prominently state: "This service is subject to receipt of government operating authority."

### **SUBPART B--CERTIFICATE TERMS, CONDITIONS, AND LIMITATIONS**

#### **Sec. 201.6 Applicability.**

Unless the certificate or the order authorizing its issuance shall otherwise provide, such terms, conditions and limitations as are set forth in this part, and as may from time to time be prescribed by the Department, shall apply to the exercise of the privileges granted by each certificate issued under section 41102 or section 41103 of the Statute.

#### **Sec. 201.7 General certificate conditions.**

(a) It shall be a condition upon the holding of a certificate that any intentional failure by the holder to comply with any provision of Statute or any order, rule, or regulation issued thereunder or any term, condition, or limitation of such certificate shall be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 41110 of the Statute even though the failure to comply occurred outside the territorial limits of the United States, except to the extent that such failure shall be necessitated by an obligation, duty, or liability imposed by a foreign country.

(b) Failure to file the reports required by part 241, 291, or 298 of this chapter shall be sufficient grounds to revoke a certificate.

(c) The authority to transport U.S. mail under a certificate is permissive, unless the Department, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service; such certificate confers no right to receive subsidy, for the carriage of mail or otherwise.

(d) An all-cargo air transportation certificate shall confer no right to carry passengers, other than cargo attendants

accompanying a shipment, or to engage in any air transportation outside the geographical scope of interstate cargo transportation. Such certificate shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(e) It shall be a condition upon the holding of a certificate that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its terms, and that the holder comply with all other requirements of part 203. OST Form 4523 may be obtained from the Office of Aviation Analysis, Special Authorities Division.

## **PART 203 -- WAIVER OF WARSAW CONVENTION LIABILITY LIMITS AND DEFENSES**

- Sec.  
203.1                    Scope.  
203.2                    Applicability.  
203.3                    Filing requirements for adherence to  
                                Montreal Agreement.  
203.4                    Montreal Agreement as part of airline-  
                                passenger contract and conditions of  
                                carriage.  
203.5                    Compliance as condition on operations  
                                in air transportation.

### **Sec. 203.1 Scope.**

This part requires that certain U.S. and foreign direct air carriers waive the passenger liability limits and certain carrier defenses in the Warsaw Convention in accordance with the provisions of Agreement 18900, dated May 13, 1966, and provides that acceptance of authority for, or operations by the carrier in, air transportation shall be considered to act as such a waiver by that carrier.

### **Sec. 203.2 Applicability.**

This part applies to all direct U.S. and foreign direct air carriers, except for air taxi operators as defined in part 298 of this chapter that (a) are not commuter air carriers, (b) do not participate in interline agreements, and (c) do not engage in foreign air transportation.

### **Sec. 203.3 Filing requirements for adherence to Montreal Agreement.**

All direct U.S. and foreign air carriers shall have and maintain in effect and on file in the Department's Documentary Services Division (Docket 17325) on OST Form 4523 a signed counterpart to Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and Hague Protocol approved by CAB Order E-23680, dated May 13, 1966 (the Montreal Agreement), and a signed counterpart of any amendment or amendments to such Agreement that may be approved by the Department and to which the air carrier or foreign air carrier becomes a party. U.S. air taxi operators registering under part 298 of this chapter and Canadian charter air taxi operators registering under part 294 of this chapter may comply with this requirement by filing completed OST Forms 4507 and 4523, respectively, with the Department's Office of Aviation Analysis. Copies of these forms can be obtained from the Office of Aviation Analysis, Special Authorities Division.

### **Sec. 203.4 Montreal Agreement as part of airline-passenger contract and conditions of carriage.**

(a) As required by the Montreal Agreement, carriers that are otherwise generally required to file tariffs shall file with the Department's Tariffs Division a tariff that includes the provisions of the counterpart to Agreement 18900.

(b) As further required by that Agreement, each participating carrier shall include the Agreement's terms as part of its conditions of carriage. The participating carrier shall give each of its passengers the notice required by the Montreal Agreement as provided in Sec. 221.175 of this chapter.

(c) Participation in the Montreal Agreement, whether by signing the Agreement, filing a signed counterpart to it under

Sec. 203.3, or by operation of law under Sec. 203.5, shall constitute a special agreement between the carrier and its passengers as a condition of carriage that a liability limit of not less than \$75,000 (U.S.) shall apply under Article 22(1) of the Warsaw Convention for passenger injury and death. Such participation also constitutes a waiver of the defense under Article 20(1) of the Convention that the carrier was not negligent.

### **Sec. 203.5 Compliance as condition on operations in air transportation.**

It shall be a condition on the authority of all direct U.S. and foreign carriers to operate in air transportation that they have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900, and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, as required by this subpart. Notwithstanding any failure to file that counterpart and such tariff, any such air carrier or foreign air carrier issued license authority (including exemptions) by the Department or operating in air transportation shall be deemed to have agreed to the provisions of Agreement 18900 as fully as if that air carrier or foreign air carrier had in fact filed a properly executed counterpart to that Agreement and tariff.

## PART 204--DATA TO SUPPORT FITNESS DETERMINATIONS

### Subpart A--General Provisions

Sec.

204.1 Purpose.

204.2 Definitions.

### Subpart B--Filing Requirements

204.3 Applicants for new certificate or commuter air carrier authority.

204.4 Carriers proposing to provide essential air service.

204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.

204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

204.7 Revocation for dormancy.

### SUBPART A--GENERAL PROVISIONS

#### Sec. 204.1 Purpose.

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible place, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority.

#### Sec. 204.2 Definitions.

As used in this part:

(a) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(b) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 41102 of the Statute or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute. Certificated carriers are those that hold certificate authority.

(c) *Citizen of the United States* means:

(1) An individual who is a citizen of the United States;

(2) A partnership each of whose partners is an individual who is a citizen of the United States; or

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(d) *Commuter air carrier* means an air carrier holding or seeking authority under part 298 of this Chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(e) *Eligible place* means a place in the United States that:

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

(f) *Essential air service* is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

(g) *Fit* means fit, willing, and able to perform the air transportation in question properly and to conform to the provisions of the Statute and the rules, regulations and requirements issued under the Statute.

(h) *Interstate air transportation* means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft--

(1) Between a place in--

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

(i) *Key personnel* include the directors, president, chief executive officer, chief operating officer, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(j) *Normalized operations* are those which are relatively free of start-up costs and temporary barriers to full-scale operations posed by the carrier's limited experience.

(k) *Relevant corporations* are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (i.e., any air carrier in which any directors, principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier as indicated, for example, by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies.

(l) *Substantial change in operations, ownership, or management* includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) The filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the

other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(m) *Substantial interest* means beneficial control of 10 percent or more of the outstanding voting stock.

## SUBPART B--FILING REQUIREMENTS

### Sec. 204.3 Applicants for new certificate or commuter air carrier authority.

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in paragraphs (a) through (v) of this section. In addition, the Department may require an applicant to provide additional data if necessary to reach an informed judgment about its fitness. If the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Air Carrier Fitness Division to ascertain what data required by this section are already available to the Department and need not be included in the filing.

*Note:* If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with Sec. 241.22(g).

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated, certifying that the applicant corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:

(1) Their names and addresses;

(2) The experience, expertise, and responsibilities of each;

(3) The number of shares of the applicant's voting stock held by each and the percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 10 percent or more of total voting stock outstanding), and other interests each holds or has held in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant. Such list shall include:

(1) Each person's name, address and citizenship;

(2) The number of shares of the applicant's voting stock held by each such person and the corresponding percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been

(i) An air carrier, a foreign air carrier, a common carrier, or

(ii) Substantially engaged in the business of aeronautics, or

(iii) An officer or director of any such entity, or

(iv) A holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and relationship to the applicant.

(i) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:

(1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and

(2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation;

(3) All footnotes applicable to the financial statements, including:

(i) A statement as to whether the documents were prepared in accordance with Generally Accepted Accounting Principles, and

(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;

(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant.

(l) A list of all actions and outstanding judgments for more than \$5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.

(m) The number of actions and outstanding judgments of less than \$5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each on such judgments.

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Statute or orders, rules, regulations, or requirements issued pursuant to the Statute, and any corrective actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)

(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:

- (1) The date of the occurrence;
- (2) The type of flight;
- (3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;
- (4) A description of any damage to the aircraft;
- (5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and
- (6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identify of the local FAA office and personnel responsible for processing an application for any additional FAA authority needed to conduct the proposed operations.

(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an itemization of all pre-operating and start-up costs associated with the initiation of the proposed service. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

#### **Sec. 204.4 Carriers proposing to provide essential air service.**

Applicants proposing to provide essential air service have been divided into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier's fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Air Carrier Fitness Division to ascertain what information is already available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

(1) All of the information required under Sec. 204.3 of this part.

(2) A description of the back-up aircraft available to the applicant, including:

- (i) The number of each type of such aircraft;
- (ii) The conditions under which such aircraft will be available to the carrier;

(iii) The carrier's plans for financing the acquisition or lease of such additional aircraft; and

(iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.

(3) A description of the fuel available to perform the proposed essential aerservices and the carrier's contracts with fuel suppliers.

(4) The carrier's systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).

(5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(6) A description of the average number of block hours each type of aircraft is currently flown per day.

(7) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.

(8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.

(9) A pro-forma income statement for the proposed operation for the first annual period.

(b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

(1) All of the information required under Sec. 204.3 of this part.

(2) All of the information required under paragraph (a) of this section.

(3) A forecast Income Statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:

- (i) Subsidy needed;
  - (ii) Estimated block hours and revenue miles by type of aircraft;
  - (iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;
  - (iv) An explanation of the derivation of estimates of operating expenses; and
  - (v) A description of the manner in which costs and revenues are allocated.
- (4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

**Sec. 204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.**

(a) A certificated or commuter air carrier proposing a substantial change in operations, ownership or management shall file the data set forth in Sec. 204.3. These data must be submitted in cases where:

- (1) The proposed change requires new or amended authority, or
- (2) Although the carrier's existing certificate or commuter authority is adequate for the performance of its planned services, the change substantially alters the factors upon which its latest fitness finding is based.

(b) Information which a carrier has previously formally filed with the Department, or with another Federal agency where they are available to the Department, which continues to reflect the current state of the carrier's fitness may be omitted. The carrier instead should identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the carrier may contact the Department (Air Carriers Fitness Division) to ascertain what data required by this section, if any, are already available to the Department or are not applicable to the substantial change in question and need not be included in the filing.

(c) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, ownership or management shall be addressed to the Chief, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**Sec. 204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.**

Carriers proposing to make a change which would not substantially affect their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier's fitness into question, the Department may require the applicant carrier to file additional information.

**Sec. 204.7 Revocation for dormancy.**

(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all of the data required by Sec. 204.3 at least 45 days before it intends to provide any such air transportation. Such filings shall be addressed to the Department of Transportation Dockets, 400 Seventh Street, SW., Washington, DC 20590. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in fitness data previously formally filed with the Department, the carrier shall file a sworn statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refilled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a data submission under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date or that decision or finding shall be the date considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

**PART 205 -- AIRCRAFT ACCIDENT LIABILITY INSURANCE**

Sec.	
205.1	Purpose.
205.2	Applicability.
205.3	Basic requirements.
205.4	Filing of evidence of insurance.
205.6	Minimum coverage.
205.7	Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.
205.8	Cargo liability disclosure statement.

**§205.1 Purpose.**

This part contains the rules for aircraft accident liability insurance coverage needed by U.S. direct air carriers to obtain or to exercise authority from the Department to operate in interstate or foreign air transportation, and by foreign direct air carriers to operate under permit or other authority in foreign air transportation. It further requires a disclosure statement to shippers about cargo liability limits and insurance coverage for U.S. and foreign direct air carriers.

### **§205.2 Applicability**

These rules apply to all U.S. direct air carriers, including commuter air carriers and air taxi operators as defined in §298.2 of this chapter, and foreign direct air carriers, including Canadian charter air taxi operators as defined in §294.2(c) of this chapter.

### **§205.3 Basic requirements.**

(a) A U.S. or foreign direct air carrier shall not engage in air transportation unless it has in effect aircraft accident liability insurance coverage that meets the requirements of this part for its air carrier or foreign air carrier operations. The minimum amounts of coverage required by this part may be provided either by insurance policies or by self-insurance plans. The currently effective policy of insurance or complete plan for self-insurance shall be available for inspection by the Department at the carrier's principal place of business. The current certificate of insurance or a summary of the complete self-insurance plan on file with the Department, as required by Sec. 205.4, shall be available for public inspection at the carrier's principal place of business.

(b) For purposes of this part, a certificate of insurance is one or more certificates showing insurance by one or more insurers (excluding reinsurers) of currently effective and properly endorsed policies of aircraft accident liability insurance in compliance with this part. When more than one such insurer is providing coverage, the limits and types of liability assumed by each insurer (excluding reinsurers) shall be clearly stated in the certificate of insurance. Insurance policies and self-insurance plans named in a certificate of insurance that accompanies an application for initial registration or for operating authority shall become effective not later than the proposed starting date for air carrier operations as shown in the application.

(c) The certificate of insurance shall list the types or classes of aircraft, or the specific aircraft by FAA or foreign government registration number, with respect to which the policy of insurance applies, or shall state that the policy applies to all aircraft owned or operated by the carrier in its air transportation operations. With respect to certificates of insurance that list aircraft by government registration number, the policy or self-insurance plan shall state that, while an aircraft owned or leased by the carrier and declared in the policy is withdrawn from normal use because of its breakdown, repair, or servicing, such insurance as is provided by the policy or plan for that aircraft shall apply also to another aircraft of similar type, horsepower, and seating capacity, whether or not owned by the insured, while temporarily used as a substitute aircraft.

(d) Each certificate of insurance shall be signed by an authorized officer, agent, or other representative of the insurer or the insurance broker.

(e) Insurance coverage to meet the requirements of this part shall be obtained from one or more of the following:

(1) An insurer licensed to issue aircraft accident liability policies in any State, Commonwealth, or Territory of the United States, or in the District of Columbia;

(2) Surplus line insurers named on a current list of such insurers issued and approved by the insurance regulatory authority of any State, Commonwealth, or Territory of the United States or of the District of Columbia; or

(3) Insurers licensed or approved by a foreign government.

This requirement may be waived by the Department in the public interest.

### **§205.4 Filing of evidence of insurance.**

(a) A U.S. or foreign air carrier shall file a certificate of insurance or a complete plan for self-insurance with the Department's Office of Aviation Analysis. Each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times. The Department will normally notify the carrier within 20 days of receipt if the certificate or plan does not meet the requirements of this part. The two Certificates of Insurance (OST Form 6410 for U.S. air carriers, including commuter air carriers and air taxi operators, and OST Form 6411 for foreign air carriers, including Canadian charter air taxi operators) are available from the Office of Aviation Analysis. The Department may return the certificate or self-insurance plan to the carrier if it finds for good cause that such plan or certificate does not show adequate evidence of insurance coverage under this part.

(b) If the coverage is by type or class of aircraft or by specific aircraft, endorsements that add previously unlisted aircraft or aircraft types or classes to coverage, or that delete listed aircraft, types, or classes from coverage, shall be filed with the Department's Office of Aviation Analysis not more than 30 days after the effective date of the endorsements. Aircraft shall not be listed in the carrier's operations specifications with the FAA and shall not be operated unless liability insurance coverage is in force.

(c) When the insured air carrier is a U.S. air taxi operator operating in the State of Alaska, certificates and endorsements shall be filed with the Department's Alaska Field Office, 801 B Street, Suite 506, Anchorage, Alaska 99501-3657.

### **§205.5 Minimum coverage.**

(a) Insurance contracts and self-insurance plans shall provide for payment on behalf of the carrier, within the specific limits of liability in this section, of all sums that the carrier shall become legally obligated to pay as damages, excluding any deductible in the policy, for bodily injury to or death of a person, or for damage to the property of others, resulting from the carrier's operation or maintenance of aircraft in air transportation provided under its authority from the Department.

(b) U.S. and foreign direct air carriers, including commuter air carriers but excluding U.S. air taxi operators and Canadian charter air taxi operators, shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with minimum limits of \$300,000 for any one person in any one occurrence, and a total of \$20,000,000 per involved aircraft for each occurrence, except that for aircraft of not more than 60 seats or 18,000 pounds maximum payload capacity, carriers need only maintain coverage of \$2,000,000 per involved aircraft for each occurrence.

(2) Any such carrier providing air transportation for passengers shall, in addition to the coverage required in paragraph (b)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of \$300,000 for any one passenger, and a total per involved aircraft for each

occurrence of \$300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(c) U.S. air taxi operators registered under part 298 shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, with minimum limits of:

(i) \$75,000 for any one person in any one occurrence, and a total of \$300,000 per involved aircraft for each occurrence, and

(ii) A limit of at least \$100,000 for each occurrence for loss of or damage to property.

(2) U.S. air taxi operators carrying passengers in air transportation shall, in addition to the coverage required in paragraph (c)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of \$75,000 for any one passenger, and a total per involved aircraft for each occurrence of \$75,000 times 75 percent of the number of passenger seats installed in the aircraft.

(d) Canadian charter air taxi operators registered under part 294 of this chapter shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with a minimum coverage of \$75,000 for any one person in any one occurrence, and a total of \$2,000,000 per involved aircraft for each occurrence, except that Canadian charter air taxi operators operating aircraft of more than 30 seats or 7,500 pounds maximum cargo payload capacity, and a maximum authorized takeoff weight on wheels not greater than 35,000 pounds shall maintain coverage for those aircraft of \$20,000,000 per involved aircraft for each occurrence.

(2) Canadian charter air taxi operators engaging in passenger charter air service under part 294 of this chapter shall, in addition to the coverage required in paragraph (d)(1) of this section, maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers, with a minimum coverage of \$75,000 for any one passenger and a total per involved aircraft for each occurrence of \$75,000 times 75 percent of the total number of passenger seats installed in the aircraft.

(e) Notwithstanding paragraphs (b), (c) and (d) of this section, the carrier may be insured for a combined single limit of liability for each occurrence. The combined single-limit coverage must be not less than the combined required minimums for bodily injury and property damage coverage plus, if the aircraft is used in passenger service, the required total passenger coverages stipulated in paragraph (b) of this section for U.S. and foreign direct air carriers and commuter carriers, paragraph (c) of this section for U.S. air taxi operators, or paragraph (d) of this section for Canadian charter air taxi operators.<sup>1</sup> The single-limit liability policy for the required

<sup>1</sup> For example: the minimum single limit of liability acceptable for any aircraft in air taxi passenger service with 16 passenger seats would be computed on the basis of limits set forth in paragraph (c) as follows: 16 x .75 equals 12; 12 x \$75,000 equals \$900,000; \$900,000 plus \$300,000 (nonpassenger liability per occurrence) plus \$100,000 (property damage per occurrence) equals \$1,300,000. The latter amount is the minimum in which a single-limit liability policy may be written.

aircraft accident liability coverage may be provided by a single policy or by a combination of primary and excess policies.

(f) The liability coverage shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the carrier. The limits of the liability for the amounts required by this part shall apply separately to each occurrence. Any payment made under the policy or plan because of any one occurrence shall not reduce the coverage for payment of other damages resulting from any other occurrence.

#### **§205.6 Prohibited exclusions of coverage.**

(a) No warranty or exclusion in the policy or plan or in any endorsement or amendment to the policy or plan, nor any violation of the policy or plan by the carrier, shall remove the liability coverage required by this part, except as specifically approved by the

Department. This requirement shall not limit the right of insurers to recover from the carrier for amounts paid.

(b) A policy of insurance or a self-insurance plan required by this part shall not contain the following exclusions:

(1) Violation of any safety-related requirement imposed by statute or by rule of a government agency.

(2) Liability assumed by the carrier under an agreement to raise the liability limitations of the Warsaw Convention by signing a counterpart to the agreement of carriers (such as the Montreal Agreement, 18900, as approved by Board Order E-23680, May 13, 1966, agreeing to a limit on the carrier's liability for injury or death of passengers of \$75,000 per passenger), or any amendment to such agreement that may be approved by the Department and to which the carrier becomes a party.

#### **§205.7 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.**

(a) Each policy of aircraft accident liability insurance and plan for self insurance shall specify that it shall remain in force, and may not be replaced, canceled, withdrawn, or in any way modified to reduce the minimum standards set forth in this part, or to change the extent of coverage, by the insurer or the carrier, nor expire by its own terms, in regard to coverage for the carrier in its common carrier operations in air transportation, until 10 days after written notice by the insurer (in the event of replacement, by the retiring insurer), or by the insurer's representative, or by the carrier, describing the change, to the Department's Office of Aviation Analysis (or, for Alaskan air taxi operators, to the Department's Alaska Field Office), which 10-day notice period shall start to run from the date such notice is actually received at the Department. For purposes of this part, a policy will not be considered to have expired if the same insurer renews its coverage without reduction in the extent of coverage or amounts of coverage, and without a break in coverage, whether or not a new policy is issued, and notice to the Department is not required in that event. If the coverage being changed is by type or class of aircraft or by specific aircraft, endorsements adding or deleting specific aircraft or types or classes of aircraft, for which prior notice would be required by this paragraph, shall be filed in accordance with Sec. 205.4(b), and prior notice of the change need not be given under this paragraph.

(b) The requirements of this section shall not apply if the policy contains a lesser time period for cancellation in a war risk exclusion. If the war risk exclusion is activated by the

insurer, the insurer or its representative shall immediately notify the Department.

**§205.8 Cargo liability disclosure statement.**

Every direct U.S. or foreign air carrier providing air cargo service in air transportation shall give notice in writing to the shipper, when a shipment is accepted, of the existence or absence of cargo liability insurance, and the limits on the extent of its liability, if any. The notice shall be clearly and conspicuously included on or attached to all of its rate sheets and airwaybills.

## **PART 206--CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY: SPECIAL AUTHORIZATIONS & EXEMPTIONS**

Sec.

- 206.1 Emergency transportation.
- 206.2 Exemption from schedule filing.
- 206.3 Transportation of newspersons by all-cargo carriers.
- 206.4 Exemption of air carriers for military transportation.
- 206.5 Small aircraft operations by certificated carriers.

### **Sec. 206.1 Emergency transportation.**

Notwithstanding the provisions of section 41101 of the Statute, and any term, condition or limitation attached to the exercise of the privileges of an air carrier certificate of public convenience and necessity which prohibits an air carrier from engaging in air transportation between any points on its route, the air carrier may carry between such points (a) any person or persons certified by a physician to be in need of immediate air transportation in order to secure emergency medical or surgical treatment together with any necessary attendant or attendants and (b) any medical supplies certified by a physician as requiring immediate air transportation for the protection of life. Air carriers offering to provide this emergency transportation shall file appropriate tariffs pursuant to Chapter 415 of the Statute.

### **Sec. 206.2 Exemption from schedule filing.**

All air carriers are hereby exempted from the requirements of section 41902(b) of the Statute, which provides that each air carrier must periodically provide the Department and the U.S. Postal Service a listing of all of its regularly operated aircraft schedules and schedule changes, showing for each schedule the points served and the departure and arrival times.

### **Sec. 206.3 Transportation of newspersons by all-cargo carriers.**

Notwithstanding the provisions of section 41101 and Chapter 415 of the Statute and part 221 of this chapter, an air carrier holding a certificate of public convenience and necessity for the transportation of only property and mail may provide transportation to persons on regularly scheduled cargo flights for the purpose of collecting data for preparation of feature news, pictorial or like articles provided that the transportation is limited to the writer, journalist, or photographer engaged in the preparation of data for use in feature news, pictorial, or like articles which are to appear in newspapers or magazines, or on radio or television programs and which will publicize the regularly scheduled cargo operations of the carrier.

### **Sec. 206.4 Exemption of air carriers for military transportation.**

Air carriers providing air transportation pursuant to a contract with the Department of Defense are hereby exempted from Chapter 415 of the Statute, and from part 221, Secs. 207.4 and 208.32, of this chapter, with respect to those services.

### **Sec. 206.5 Small aircraft operations by certificated carriers.**

(a) A carrier holding an effective certificate issued under section 41102 of the Statute, when conducting operations with small aircraft, is exempt from the requirements of the Statute as set forth in subpart B of part 298 of this chapter, except section 41708 of the Statute, and is subject to the requirements set forth in the following provisions of this chapter:

- (1) Part 205, with the minimum coverage requirements of Sec. 205.5(b),
- (2) Part 215,
- (3) Part 298, subpart D, Secs. 298.30, and 298.38, and subpart H, and
- (4) Part 298, subpart F, if the certificated carrier conducts operations with small aircraft only (a certificated

carrier conducting operations with both small and large aircraft is subject only to the reporting requirements contained in part 241 of this chapter).

(b) If a certificated carrier, when conducting operations with small aircraft, provides foreign air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing a tariff or charging the sum of the applicable local rates, fares, or charges. If the carrier files a tariff for through service, it is not exempt from Chapter 415 or section 41310 of the Statute for that air transportation.

## PART 215--USE AND CHANGE OF NAMES

Sec.

215.1 Applicability.

215.2 Purpose.

215.3 Use of name.

215.4 Change of name or use of trade name.

215.5 Procedure in case of similarity of names.

215.6 Acknowledgment of registration.

### Sec. 215.1 Applicability.

This part applies to all certified air carriers, commuter air carriers, and foreign direct air carriers and to initial or amended applications for authority, applications for certificate or permit transfers or reissuances, and registration of business names.

### Sec. 215.2 Purpose.

This part sets rules under which direct air carriers may use the names in their operating authorizations and change those names. It further provides for notification to air carriers that may be affected by the use by other air carriers of the same or similar names. Its purpose is to place the responsibility for resolving private disputes about the use of similar names with the air carriers involved, through recourse to the trade names statutes and the courts. These rules do not preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

### Sec. 215.3 Use of name.

In holding out to the public and in performing air transportation services, a direct air carrier or foreign direct air carrier subject to this part shall use only the name in which its operating authorization is issued or trade name is registered, and shall not operate or hold out to the public in a name not acknowledged by the Department to be so registered. Except as provided in Secs. 221.21(j) and 221.35(d) of this chapter, minor variations in the use of this name, including abbreviations, contractions, initial letters, or other variations of the name that are identifiable with the authorized name, are permitted. Slogans and service marks shall not be considered names for the purpose of this part, and their use is not restricted.

### Sec. 215.4 Change of name or use of trade name.

(a) *Registrations.* Any air carrier subject to this part that desires to change the name in which its operating authorization has been issued, or to use a trade name, or to

obtain initial operating authority must register the name with the Department. The Department will construe any application for initial, reissued, or transferred authority, as well as any commuter air carrier registration or amendment filed under part 298, as containing a "registration" of the intended name. A separate name registration document need not be filed. A carrier registering use of a trade name, without seeking reissuance of its underlying certificate or foreign air carrier permit or exemption authority, must file a statement that complies with Secs. 302.3 and 302.4 of this chapter registering its intended name with the Air Carrier Fitness Division if it is a U.S. certificated or commuter carrier, or within the Licensing Division if it is a foreign air carrier.

(b) *Montreal Agreement.* Each registration under this section shall be accompanied by three copies of a counterpart to the Montreal Agreement (Agreement 18900) (OST Form 4523) signed by the carrier using the proposed name. Upon arrival of the application, the Department will place a copy of the signed OST form 4523 in Docket 17325.

### Sec. 215.5 Procedure in case of similarity of names.

The Department will compare the proposed name in any registration filed under this part or in an application for new, reissued, or transferred authority with a list of names used by existing certificated, commuter and foreign direct air carriers. The Department will notify the applicant of any other certificated, foreign or commuter carriers that may have an identical or similar name. The registrant must then notify those carriers of its registration. The notification will identify the applicant and state its proposed name or the name requested, area of operation or proposed area of operation, type of business, and other pertinent matters. The registrant must then file a certificate of service of the notification with the Department.

### Sec. 215.6 Acknowledgment of registration.

After completion of the filing and notification requirements of this part, the Department may acknowledge the registration by notice in the action granting the application for initial operating authority, transfer, or reissuance or in approving the commuter registration, or by separate notice in the case of use of a trade name. Non-action under this provision shall not be construed as an adjudication of any rights or liabilities.

## PART 243--PASSENGER MANIFEST INFORMATION

Sec.

243.1 Purpose.

243.3 Definitions.

243.5 Applicability.

243.7 Information collection requirements.

243.9 Procedures for collecting and maintaining the information.

243.11 Transmission of information after an aviation disaster

243.13 Filing requirements.

243.15 Conflict with foreign laws.

243.17 Enforcement.

### Sec. 243.1 Purpose.

The purpose of this part is to ensure that the U.S. government has prompt and adequate information in case of an aviation disaster on covered flight segments.

### Sec. 243.3 Definitions.

*Air piracy* means any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent.

*Aviation disaster* means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

*Contact* means a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

*Covered airline* means:

(1) certificated air carriers, and

(2) foreign air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

*Covered flight segment* means a passenger-carrying flight segment operating to or from the United States (*i.e.*, the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States.

*Full name* means the given name, middle initial or middle name, if any, and family name or surname as provided by the passenger.

*Passenger* means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

*United States* means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

*U.S. citizen* means United States nationals as defined in 8 U.S.C. 1101(a)(22).

### Sec. 243.5 Applicability.

This part applies to covered flight segments operated by covered airlines. (See Sec. 243.3 of this part)

### Sec. 243.7 Information collection requirements.

(a) For covered flight segments, each covered airline shall:

(1) Collect, or cause to be collected, the full name for each passenger who is a U.S. citizen. U.S.-citizen passengers for whom this information is not obtained shall not be boarded;

(2) Solicit, or cause to be solicited, a name and telephone number of a contact from each passenger who is a U.S. citizen; and

(3) Maintain a record of the information collected pursuant to this section.

(b) The covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section.

### Sec. 243.9 Procedures for collecting and maintaining the information.

Covered airlines may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.

(b) The information shall be kept until all passengers have disembarked from the covered flight segment.

(c) The contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other governments or governmental agencies that have an independent, legal right to obtain this information.

(d) The contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes.

### Sec. 243.11 Transmission of information after an aviation disaster.

(a) Each covered airline shall inform the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately upon learning of an aviation disaster involving a covered flight segment operated by that carrier. The Managing Director may be reached 24 hours a day through the Department of State Operations Center at (202) 647-1512.

(b) Each covered airline shall transmit a complete and accurate compilation of the information collected pursuant to Sec. 243.7 of this part to the U.S. Department of State as quickly as possible, but not later than 3 hours, after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier.

(c) Upon request, a covered airline shall transmit a complete and accurate compilation of the information collected pursuant to Sec. 243.7 of this part to the Director, Family Support Services, National Transportation Safety Board.

### Sec. 243.13 Filing requirements.

(a) Each covered airline that operates one or more covered flight segments shall file with the U.S. Department of Transportation a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. This description shall include a contact at the covered airline, available at any time the covered

airline is operating a covered flight segment, who can be consulted concerning information gathered pursuant to this part.

(b) Each covered airline shall file any contact change as well as a description of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to OST Docket 98-3305, Dockets Facility (SVC-121.30), U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. The statement shall be filed by July 1, 1998, or, for covered airlines beginning operations after July 1, 1998, prior to the date a covered airline operates a covered flight segment.

**Sec. 243.15 Conflict with foreign laws.**

(a) If a covered airline obtains a waiver in the manner described in this section, it will not be required to solicit, collect or transmit information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent it is established by the carrier that such solicitation or collection would violate applicable foreign law.

(b) Covered airlines that claim that such solicitation, collection or transmission would violate applicable foreign law in certain foreign countries shall file a petition requesting a waiver in the Docket Facility, on or before October 1, 1998, or on or before beginning service between that country and United States. Such petition shall include copies of the pertinent

foreign law, as well as a certified translation, and shall include opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. Statements from foreign governments on the application of their laws will also be accepted.

(c) The U.S. Department of Transportation will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law.

(d) The U.S. Department of Transportation will maintain an up-to-date listing in OST Docket 98-3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

**Sec. 243.17 Enforcement.**

The U.S. Department of Transportation may at any time require a covered airline to produce a passenger manifest including emergency contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with his part may be subject to enforcement action by the Department.

# PART 298--EXEMPTIONS FOR AIR TAXI & COMMUTER AIR CARRIER OPERATIONS

## Subpart A--General

Sec.

- 298.1 Applicability of part.
- 298.2 Definitions.
- 298.3 Classification.
- 298.4 Requests for statement of authority.
- 298.5 Dual operations--air taxi or commuter air carrier and all-cargo air service.

## Subpart B--Exemptions

- 298.11 Exemption authority.
- 298.12 [Reserved]
- 298.13 Duration of exemption.

## Subpart C--Registration and Re-registration for Exemption

- 298.21 Filing for registration by air taxi operators and commuter air carriers.
- 298.22 Processing by the Department.
- 298.23 Notifications to the Department of change in operations.
- 298.24 Cancellation of the registration.

## Subpart D--Limitations and Conditions on Exemptions and Operations

- 298.30 Public disclosure of policy on consumer protection.
- 298.31 Scope of service and equipment authorized.
- 298.32-298.34 [Reserved]
- 298.35 Limitations on carriage of mail.
- 298.36 Limitation on use of business name.
- 298.37 Prohibition of services not covered by insurance.
- 298.38 Security arrangements for operating Public Charters.

## Subpart E--[Reserved]

## Subpart F--Reporting Requirements

- 298.60 General reporting instructions.
- 298.61 Reporting of traffic statistics for scheduled passenger operations.
- 298.62 Reporting of financial data.
- 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.
- 298.64 Reporting of nonscheduled passenger enplanements by small certificated air carriers.
- 298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.
- 298.66 Reporting exemption for State collection of data.

## Subpart G--[Reserved]

## Subpart H--Violations

- 298.80 Enforcement.

## SUBPART A--GENERAL

### Sec. 298.1 Applicability of part.

This part establishes a classification of air carriers known as "air taxi operators" provides certain exemptions to them from some of the economic regulatory provisions of Subtitle VII of Title 49 of the United States Code (Transportation) and specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in interstate and/or foreign air transportation

in all States, Territories and possessions of the United States. This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

### Sec. 298.2 Definitions.

As used in this part:

(a) *Air taxi operator* means an air carrier coming within the classification of air taxi operators established by Sec. 298.3.

(b) *Air Transportation* means interstate air transportation, foreign air transportation, or the transportation of mail by aircraft as defined by the Statute.<sup>1</sup>

(c) *Aircraft-hours* means the airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight stage.

(d) *Aircraft miles* means the miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern.

(d-1) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(d-2) *Certificated carrier* means an air carrier holding a certificate issued under section 41102 of the Statute.

(e) *Commuter air carrier* means an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(f) *Departure* means takeoff from an airport.

(g) *Flight stage* means the operation of an aircraft from takeoff to landing.

(h) *Large aircraft* means any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

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<sup>1</sup> *Interstate air transportation* is defined in section 40102(a)(25) as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft (1) between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (2) when any part of the transportation is by aircraft. NOTE: Operations wholly within the geographic limits of a single State are not considered interstate air transportation if in those operations the carrier transports no more than a de minimus volume of passengers or property moving as part of a continuous journey to or from a point outside the State.

*Foreign air transportation* is defined in section 40102(a)(23) of the Statute as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

*Air transportation* also is defined to include the transportation of mail by aircraft. Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators in some circumstances under contract with the Postal Service.

(i) *Maximum certificated takeoff weight* means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate.<sup>2</sup>

(j) *Maximum passenger capacity* means the maximum number of passenger seats for which an aircraft is configured.

(k) *Maximum payload capacity* means the maximum certificated take-off weight of an aircraft, less the empty weight,<sup>3</sup> less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for the weight of the crew, oil, and fuel is as follows:

(1) Crew--200 pounds per crew member required under FAA regulations,

(2) Oil--350 pounds,

(3) Fuel--the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart,<sup>4</sup>

Provided, however, That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA,<sup>5</sup> maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(l) *Mile* means a statute mile, i.e., 5,280 feet.

(m) *On-line origin-destination* means the points at which a passenger enters and leaves the system of an air carrier on a one-way trip or on each of the directional parts of a round, circle, or open-jaw trip, ignoring intermediate points of intra-line transfer.

(n) *Passengers carried* means passengers on board each flight stage.

(o) *Point* when used in connection with any territory or possession of the United States, or the States of Alaska and Hawaii, means any airport or place where aircraft may be landed or taken off, including the area within a 25-mile radius of such airport or place; when used in connection with the continental United States, except Alaska, it shall have the same meaning except be limited to the area within a 3-mile radius of such airport or place: Provided, That for the purposes of this part, West 30th Street Heliport and Pan Am Building Heliport, both located in New York City, shall be regarded as separate points.

(p) *Revenue passenger-mile* means one revenue passenger transported one mile. Revenue passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

(q) *Revenue seat-miles available* means the aircraft-miles flown on each flight stage multiplied by the number of seats available for sale on that flight stage.

(r) *Revenue ton-mile* means one ton of revenue traffic transported one mile. Revenue ton-miles are computed by multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage and converted to ton-miles by dividing total revenue pound-miles by 2,000 pounds.

(s) *Revenue ton-miles available* means the aircraft-miles flown on each flight stage multiplied by the number of pounds of aircraft capacity available for use on that stage and converted to ton-miles by dividing total pound-miles available by 2,000 pounds.

(t) *Scheduled service* means transport service operated over routes pursuant to published flight schedules or pursuant to mail contracts with the U.S. Postal Service.

(u) *Small aircraft* means any aircraft that is not a large aircraft, as defined in this section.

(v) *Ton* means a short ton, i.e., 2,000 pounds.

(w) *Small certificated air carrier* means an air carrier holding a certificate issued under section 41102 of the Statute that provides scheduled passenger air service within and between only the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands with small aircraft as defined in this section.

### Sec. 298.3 Classification.

(a) There is hereby established a classification of air carriers, designated as "air taxi operators," which directly engage in the air transportation of persons or property or mail or in any combination of such transportation and which:

(1) Except as provided in Sec. 298.5, do not directly or indirectly utilize large aircraft in air transportation;

(2) Except as provided in Sec. 298.5, do not hold a certificate of public convenience and necessity or economic authority issued by the Department or the CAB other than that provided by this part;

(3) Have registered with the Department in accordance with subpart C of this part;

(4) Have and maintain in effect liability insurance coverage in compliance with the requirements set forth in part 205 of this chapter and have and maintain a current certificate of insurance evidencing such coverage on file with the Department; and

(5) If operating as a commuter air carrier or in foreign air transportation or participating in an interline agreement, have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523 or OST Form 4506) and comply with all other requirements of part 203 of this chapter.

(b) Except as provided in Sec. 298.5, a person who does not observe the conditions set forth in paragraph (a) of this section shall not be an air taxi operator or commuter air carrier within the meaning of this part with respect to any operations conducted while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part.

### Sec. 298.4 Requests for statement of authority.

In any instance where an air taxi operator or commuter air carrier is required by a foreign government to produce evidence of its authority to engage in foreign air transportation under the laws of the United States, the Director, Office of Aviation Analysis will, upon request, furnish the carrier with a written statement, outlining its general operating privileges under this part for presentation to the proper authorities of the foreign government.

### Sec. 298.5 Dual operations--air taxi or commuter air carrier and all-cargo air service.

Any person having or obtaining authority to operate as an all-cargo air service carrier shall not thereby lose, or be disqualified from obtaining, authority under this part to engage also in operations as an air taxi operator or commuter air carrier, regardless of the size of aircraft utilized in such all-cargo air service operations. The operations which such person conducts as an air taxi operator or commuter air carrier shall be subject to the conditions and entitled to the exemptions set forth in this part, and the operations which he conducts as an all-cargo air service carrier shall be subject to the conditions and entitled to the exemptions set forth in part 291 of this chapter.

<sup>2</sup> This weight may be found in the airplane operating record or in the airplane flight manual which is incorporated by regulation into the airworthiness certificate.

<sup>3</sup> Empty weight is defined in section 03 of part 241 as follows: the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

<sup>4</sup> Assumes VFR weather conditions and flights not involving extended overwater operations.

<sup>5</sup> The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.

## SUBPART B--EXEMPTIONS

### Sec. 298.11 Exemption authority.

Air taxi operators and commuter air carriers are hereby relieved from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to conduct air taxi or commuter air carrier operations:

(a) Section 41101;

(b) Section 41504; except that the requirements of that section shall apply to:

(1) Tariffs for through rates, fares, and charges filed jointly by air taxi operators or commuter air carriers with air carriers or with foreign air carriers subject to the tariff-filing requirements of Chapter 415; and

(2) Tariffs required to be filed by air taxi operators or commuter air carriers which embody the provisions of the counterpart to Agreement 18900 as specified in part 203 of this chapter;

(c) Section 41702, except for the requirements that air taxi operators and commuter air carriers shall:

(1) Provide safe service, equipment, and facilities in connection with air transportation;

(2) Provide adequate service insofar as that requires them to comply with parts 252 and 382 of this chapter;

(3) Observe and enforce just and reasonable joint rates, fares, and charges, and just and reasonable classifications, rules, regulations and practices as provided in tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers; and

(4) Establish just, reasonable, and equitable divisions of such joint rates, fares, and charges as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers;

(d) Section 41310, except that the requirements of that subsection shall apply to through service provided pursuant to tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers and to transportation of the handicapped to the extent that that is required by part 382 of this chapter;

(e) Section 41902;

(f) Section 41708.

### Sec. 298.12 [Reserved]

### Sec. 298.13 Duration of exemption.

The exemption from any provision of the Statute provided by this part shall continue in effect only until such time as the Department shall find that enforcement of that provision would be in the public interest, at which time the exemption shall terminate or be conditioned with respect to the person, class of persons, or service (e.g., limited-entry foreign air transportation market) subject to the finding.

## SUBPART C--REGISTRATION AND RE-REGISTRATION FOR EXEMPTION

### Sec. 298.21 Filing for registration by air taxi operators and commuter air carriers.

(a) Every air taxi operator (whether or not he is also a commuter air carrier as defined in this part) who plans to commence operations under this part shall register with the Department not later than 30 days prior to the commencement of such operations, unless, upon a showing of good cause satisfactory to the Director, Office of Aviation Analysis, registration within a lesser period of time is allowed.

(b) The registration of an air taxi operator or commuter air carrier shall remain in effect until it is amended by the carrier or canceled by the Department.

(c) Registration by all commuter air carriers, and by those air taxi operators with a mailing address in any U.S. State or Territory except Alaska, shall be accomplished by filing with

the Department's Office of Aviation Analysis (or with the Department's Alaska Aviation Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513, for air taxi operators that are not also commuter air carriers and that have a mailing address in the State of Alaska) the following:

(1) OST Form 4507, executed in duplicate.<sup>6</sup> This form shall be certified by a responsible official and shall include the following information:

(i) The name of the carrier and its mailing address;

(ii) The carrier's principal place of business, if different from its mailing address, and its area code and telephone number;

(iii) The carrier's FAA certificate number, if any, and the address and telephone number of the carrier's local FAA office;

(iv) The type of service the carrier will offer (scheduled passenger, scheduled cargo, mail under a U.S. Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations);

(v) A list of the aircraft that the carrier proposes to operate, or, in the case of an amendment to the registration, the aircraft that it is currently operating in its air taxi or commuter air carrier operations, and the aircraft type, FAA registration number and passenger capacity of each aircraft;

(vi) For initial registration, the proposed date of commencement of air taxi or commuter air carrier operations;

(vii) For amendments, whether the carrier has carried passengers in foreign air transportation during the previous 12 months;

(viii) Whether the carrier is a U.S. citizen;

(2) A certificate of insurance which is currently effective (or in case of initial registration, is to become effective), as defined in part 205 of this chapter;

(3) An 8 (in the case of commuters, 670) dollar registration filing fee in the form of a check, draft, or postal money order payable to the Department of Transportation.

(4) For air taxi operators that (i) are commuter air carriers, (ii) engage in foreign air transportation, or (iii) participate in an interline agreement, a signed counterpart of Agreement 18900 (OST Form 4523), which may be the revised registration form (OST Form 4507), as required by part 203 of this chapter. These forms can be obtained from the Office of Aviation Analysis, Special Authorities Division.

(d) No air taxi operator shall provide scheduled passenger service as a commuter air carrier at an eligible place unless it has registered with the Department as a commuter air carrier and has been found by the Department to be fit, willing, and able to conduct such service.

### Sec. 298.22 Processing by the Department.

After examination of the Form 298-A submitted by the carrier, the Department will stamp the effective date of the registration on the form and return the duplicate copy to the carrier to confirm that it has registered with the Department as required by this part. The effective date of the registration shall not be earlier than the effective date of the insurance policy or policies named in the certificate of insurance filed by the carrier under Sec. 298.21(c)(2).

### Sec. 298.23 Notifications to the Department of change in operations.

(a) An air taxi operator or commuter air carrier shall submit an amendment to its registration not later than 30 days after any of the following events:

(1) A change in its name or address;

(2) A change in its type of operations (passenger, cargo, mail, scheduled, etc.);

<sup>6</sup> OST Form 4507 is filed as part of the original document and can be obtained from the Office of Aviation Analysis, Special Authorities

(3) A temporary or permanent cessation of its operations; or

(4) A change in the type of aircraft operated.

(b) An amendment shall be made by resubmitting OST Form 4507 to the Department's Office of Aviation Analysis. If the air taxi operator has a mailing address in the State of Alaska, the form shall be mailed to the Department's Alaska Aviation Field Office, 222 West Seventh Avenue, Box 27, Anchorage, Alaska 99513.

**Sec. 298.24 Cancellation of the registration.**

The registration of an air taxi operator or commuter air carrier may be canceled by the Department if any of the following occur:

(a) The operator notifies the Department that it is ceasing operations;

(b) The operator's insurance coverage changes or lapses;

(c) The operator fails to file an amended registration when required by Sec. 298.23;

(d) The operator's operating authorization is revoked by the Federal Aviation Administration;

(e) In the case of a commuter air carrier, the Department finds that the carrier is not fit, willing, and able to conduct scheduled service.

**SUBPART D--LIMITATIONS AND CONDITIONS ON EXEMPTIONS AND OPERATIONS**

**Sec. 298.30 Public disclosure of policy on consumer protection.**

(a) Every air taxi and commuter air carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public, containing a statement setting forth the air taxi and commuter air carrier's policy on baggage liability and denied boarding compensation.

(b) An air taxi or commuter air carrier shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in Sec. 254.5 of this chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

**Sec. 298.31 Scope of service and equipment authorized.**

Nothing in this part shall be construed as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators and commuter air carriers that register with the Department extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

**Secs. 298.32-298.34 [Reserved]**

**Sec. 298.35 Limitations on carriage of mail.**

An air taxi operator or commuter air carrier is not authorized to carry mail except pursuant to contract with the Postal Service entered into pursuant to section 5402 of the Postal Reorganization Act (39 U.S.C. 5402).

**Sec. 298.36 Limitation on use of business name.**

(a) An air taxi operator or commuter air carrier in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier certificate is issued pursuant to section 44702 of

the Statute by the Federal Aviation Administration, and in which it is registered with the Department under this part.

(b) Slogans shall not be considered names for the purposes of this section, and their use is not restricted hereby.

(c) Commuter air carriers are subject to the provisions of part 215 of this chapter with regard to the use and change of air carrier names.

(d) Neither the provisions of this section nor the grant of a permission hereunder shall be deemed to constitute a finding for purposes other than for this section, or to effect a waiver of, or exemption from, any provisions of the Act or orders, rules or regulations issued thereunder.

**Sec. 298.37 Prohibition of services not covered by insurance.**

An air taxi operator or commuter air carrier shall not operate in air transportation or provide or offer to provide air transportation unless there is in effect liability insurance which covers such transportation and which is evidenced by a current certificate of insurance on file with the Department as required by part 205 of this chapter.

**Sec. 298.38 Security arrangements for operating Public Charters.**

When an air taxi operator or commuter air carrier performs a Public Charter under part 380 of this chapter, either:

(a) The air taxi operator or commuter air carrier shall meet the bonding or escrow requirements applicable to certificated carriers as set forth in Sec. 207.17 of this chapter; or

(b) The air taxi operator or commuter air carrier shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for air transportation until after the charter has been completed, notwithstanding any provision of part 380.

**SUBPART E--[RESERVED]**

**SUBPART F--REPORTING REQUIREMENTS**

**Sec. 298.60 General reporting instructions.**

(a) Each commuter air carrier and each small certificated air carrier shall file with the Department's Bureau of Transportation Statistics (BTS) the applicable schedules of BTS Form 298-C "Report of Financial and Operating Statistics for Small Aircraft Operators" as required in this section.

(b) A single copy of the BTS Form 298-C report be filed quarterly with the Office of Airline Information for the periods ended March 31, June 30, September 30 and December 31 of each year to be received on or before May 10, August 10, and February 10, respectively. Due dates falling on a Saturday, Sunday or national holiday will become effective on the first following working day.

(c) All reports should be addressed as follows: Office of Airline Information, K-25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(d) All information included in BTS Form 298-C schedules shall be typed or neatly printed.

(e) BTS Form 298-C schedules can be obtained from the above address or by telephone (202) 366-9059.

**Sec. 298.61 Reporting of traffic statistics for scheduled passenger operations.**

(a) Each commuter air carrier and each small certificated air carrier shall file BTS Form 298-C, Schedule A-1, "Report of Flight and Traffic Statistics in Scheduled Passenger Operations" and Schedule T-1, "Report of Revenue Traffic by On-Line Origin and Destination."

(b) Schedules A-1 and T-1 shall be filed quarterly as set forth in Sec. 298.60.

(c) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(d) The information included in this report shall pertain only to flights performed in scheduled passenger service during the quarter for which the report is filed.

(e) Schedule A-1 shall be used to report the total flight and traffic statistics in scheduled passenger operations by commuter air carriers and small certificated air carriers. These statistics should cover only scheduled passenger services and should be compiled in accordance with the instructions below. All statistics shall be reported in whole numbers; do not use decimals.

(f) Schedule T-1 shall show the total on-line origin and destination traffic in scheduled passenger services for the period as follows:

(1) Each pair of origin and destination airports shall appear only once, i.e., no entry shall have the same origin and destination airports as another entry. For example, DAL-HOU and HOU-DAL would each appear once, but either DAL or HOU could reappear with any other point.

(2) The origin and destination data shall be for the on-line movement of traffic rather than for flight stages or flight origin and destination. For example, if a flight operates from A to B to C with 5 passengers enplaning at A, 1 deplaning and 2 enplaning at B, and 6 deplaning at C, the applicable passenger data would be reported as follows:

Origin Airport	Destination Airport	Number of Passengers
A.....	B	1
A.....	C	4
B.....	C	2

(3) Only the ultimate origins and destinations of the traffic moving on the reporting carrier's system shall be reported. Using the example given above, the traffic report would remain the same, even if the carrier operated one flight from A to B and a different flight from B to C, as long as the passengers' on-line origins and destinations remained the same.

(4) Only one grand total shall be shown in the space provided after the final traffic entry. Do not use subtotals.

(5) Columns (1) and (2) shall show the airport codes for the movement of traffic from the point of origin to the point of destination. Carriers shall use the airport codes in the Official Airline Guide (OAG). If an airport cannot be found in the OAG, the carrier shall, until otherwise instructed by the Department, insert its own code for the airport in column (1) or (2) followed by an asterisk, and shall identify the airport and its location in the space provided.

(6) Column (3) shall show the total number of revenue passengers transported from the point of on-line origin to the point of on-line destination.

(7) Columns (4) and (5) shall be completed only by intra-Alaskan carriers, and shall reflect the total pounds of cargo and pounds of mail, respectively, transported from the point of on-line origin to the point of on-line destination.

(g) The information requested in BTS Form 298-C may be submitted on any comparable form prepared on automatic data processing equipment if the substitute form has been approved by the Director, Office of Airline Information, Department of Transportation, Washington, D.C. 20590. Data in any approved format shall contain the same column headings arranged in the same sequence as in RSPA Form 298-C.

(h) Commuter air carriers serving or proposing to serve an eligible point shall comply with the applicable requirements in part 204 of this chapter.

**Sec. 298.62 Reporting of financial data.**

(a) Each commuter air carrier and each small certificated air carrier shall file BTS Form 298-C, Schedule F-1 "Report of Financial Data." This report shall be filed quarterly as set forth in Sec. 298.60 of this part.

(b) Each carrier shall indicate in the space provided, its full corporate name and the quarter for which the report is filed.

(c) This schedule shall be used to report financial data for the overall or system operations of the carrier. At the option of the carrier, the data may be reported in whole dollars by dropping the cents. Financial data shall be reported in the following categories:

(1) Line 1 "Total Operating Revenues" shall include gross revenues accruing from services ordinarily associated with air transportation and air transportation-related services. This category shall include revenue derived from scheduled service operations, revenue derived from nonscheduled service operations, amounts of compensation paid to the carrier under section 41732 of the Statute and other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, cargo pick-up and delivery charges, and fixed-base operations involving the selling or servicing of aircraft, flying instructions, charter flights, etc.

(2) Line 2 "Total Operating Expenses" shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation services. This category shall include expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services shall not be included in this category.

(3) Line 3 "Net Income or (Loss)" shall reflect all operating and nonoperating items of profit and loss recognized during the period except for prior period adjustments.

(4) Line 4 "Passenger Revenues-Scheduled Service" shall include revenue generated from the transportation of passengers between pairs of points which are served on a regularly scheduled basis.

(d) Data reported on this form shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates. Individual carrier financial data withheld from public disclosure may be disclosed by the Department to:

(1) Parties to any proceeding before the Department to the extent such material is relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Department;

(2) Such persons and in such circumstances as the Department determines to be in the public interest or consistent with its regulatory functions and responsibilities; and

(3) Agencies and other components of the Federal Government for their internal use only. Aggregate data that does not identify individual carriers may be released prior to the aforementioned time.

**Sec. 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.**

(a) Each small certificated air carrier shall file BTS Form 298-C, Schedule F-2 "Report of Aircraft Operating Expenses and Related Statistics." This schedule shall be filed quarterly as

prescribed in Sec. 298.60. Data reported on this report shall be for the overall or system operations of the air carrier.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided for "Aircraft Type." "Aircraft Type" refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS' Office of Airline Information. In the space provided for "Aircraft Code" carriers shall insert the three digit code prescribed in the Accounting and Reporting Directives for the reported aircraft type. (Note: Aircraft of the same type but different cabin configuration may be grouped into a single classification; therefore, carriers are not required to report the fourth digit of an aircraft code indicating cabin configuration.)

(d) Line 1 Direct aircraft operating expenses shall be reported in the following categories:

(1) Line 2 "Flying Operations (Less Rental)" shall be subdivided as follows:

(i) Line 3 "Pilot and Copilot" expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(ii) Line 4 "Aircraft Fuel and Oil" expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.

(iii) Line 5 "Other" expenses shall include general (hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status, which are not provided for otherwise on this schedule.

(2) Line 6 "Total Flying Operations (Less Rentals)" shall equal the sum of lines 3, 4 and 5.

(3) Line 7 "Maintenance-Flight Equipment" shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) Line 8 "Depreciation and Rental-Flight Equipment" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

(5) Line 9 "Total Direct Expense" shall equal the sum of lines 6, 7 and 8.

(e) Line 10 "Indirect aircraft operating expenses" shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

(1) Line 11 "Flight Attendant Expense" shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(2) Line 12 "Traffic Related Expense" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(3) Line 13 "Departure Related (Station) Expense" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

(4) Line 14 "Capacity Related Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and uncollectible accounts; insurance purchased-general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

(f) Line 15 "Total Indirect Expense" shall equal the sum of lines 11, 12, 13 and 14.

(g) Line 16 "Total Operating Expense" shall equal the sum of lines 9 and 15.

(h) Line 17 "Total Block Hours (Revenue Service)" shall be computed from the time an aircraft first moves under its own power for the purposes of flight in revenue service until it comes to rest at the next point of landing. Data shall be reported by individual aircraft type and total.

(i) Line 18 "Total Departures (Revenue Service)" shall include total takeoffs in revenue service by individual aircraft type and total.

(j) Line 19 "Total Gallons of Fuel Issued" shall include the gallons of fuel used in flight operations related to fuel cost reported in total and by aircraft type on Line 4.

#### **Sec. 298.64 Reporting of nonscheduled passenger enplanements by small certificated air carriers.**

(a) Each small certificated air carrier shall file BTS Form 298-C, Schedule E-1 "Report of Nonscheduled Passenger Enplanements by Small Certificated Air Carriers." This schedule shall be filed quarterly as prescribed in Sec. 298.60.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) Enplaned passenger data shall be provided for each airport served in nonscheduled service. Nonscheduled service includes charter flights and other transportation services not constituting an integral part of services performed pursuant to published flight schedules, but does not include flights performed as extra sections to published flight schedules.

(d) In column 1, carriers shall report the full name of each airport served in nonscheduled service.

(e) In column 2, carriers shall report the three-letter airport code found in the "Official Airline Guide" (OAG). If the OAG contains no three-letter code for a point served by the carrier, a three-letter code will be provided by the BTS' Office of Airline Information upon request.

(f) In column 3, carriers shall report the total nonscheduled passengers enplaned at each airport reported in column 1. This column shall be totaled.

#### **Sec. 298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.**

(a) If circumstances prevent the filing of BTS Form 298-C on or before the due date, a written request for an extension may be submitted. Except in cases of emergency, the request must be delivered to the BTS's Office of Airline Information in writing at least three days in advance of the due date. The request must state good and sufficient reason to justify the granting of the extension and the date when the reports can be filed. If the request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(b) The Office of Airline Information may waive any reporting requirements contained in Sec. 298.61, Sec. 298.62, Sec. 298.63 and Sec. 298.64 of this part, upon its own initiative or upon written request from any air carrier if the waiver is in the public interest and the request demonstrates that:

(1) Unusual circumstances warrant such a departure;

(2) A specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal; and

(3) The application of the alternative procedure will maintain or improve uniformity in reporting between air carriers.

#### **Sec. 298.66 Reporting exemption for State collection of data.**

(a) The Office of Airline Information may exempt a commuter air carrier from the reporting requirements of Sec. 298.61 of this part if a State government collects the information specified in that section and provides it to the Department by the dates specified. The data provided to the

Department in this manner must be at least as reliable as if they were collected by the Department directly.

(b) The Office of Airline Information will provide assistance to any State agency interested in participating in this exemption program.

**SUBPART G--[RESERVED]**

**SUBPART H--VIOLATIONS**

**Sec. 298.80 Enforcement.**

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute; or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 46316 of the Statute; or other lawful sanctions including revocation of operating authority.

## PART 302--RULES OF PRACTICE IN PROCEEDINGS

Sec.

302.1 Applicability and description of part.

302.2 Definitions.

### Subpart A--Rules of General Applicability

302.3 Filing of documents.

302.4 General requirements as to documents.

302.5 Amendment of documents.

302.6 Responsive documents.

302.7 Service of documents.

302.8 Computation of time.

302.9 Continuances and extensions of time.

302.10 Parties.

302.11 Motions.

302.12 Objections to public disclosure of information.

302.13 Consolidation of proceedings.

302.14 Petitions for reconsideration.

### NON-HEARING PROCEEDINGS

302.15 Non-hearing procedures.

### RULEMAKING PROCEEDINGS

302.16 Petitions for rulemaking.

### ORAL EVIDENTIARY HEARING PROCEEDINGS

302.17 Administrative law judges.

302.18 DOT decisionmaker.

302.19 Participation by persons not parties.

302.20 Formal intervention.

302.21 Appearances.

302.22 Prehearing conference.

302.23 Hearing.

302.24 Evidence.

302.25 Subpoenas.

302.26 Depositions.

302.27 Rights of witnesses; attendance fees and mileage.

302.28 Transcripts of hearings.

302.29 Argument before the administrative law judge.

302.30 Briefs to the administrative law judge.

302.31 Initial and recommended decisions; certification of the record.

302.32 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.

302.33 Tentative decision of the DOT decisionmaker.

302.34 Exceptions to tentative decisions of the DOT decisionmaker.

302.35 Briefs to the DOT decisionmaker.

302.36 Oral argument before the DOT decisionmaker.

302.37 Waiver of procedural steps after hearing.

302.38 Final decision of the DOT decisionmaker.

### Subpart B--Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

302.201 Applicability.

302.202 Contents of applications.

302.203 Service of documents.

302.204 Responsive documents.

302.205 Economic data and other facts.

302.206 Verification.

### DISPOSITION OF APPLICATIONS

302.207 Cases to be decided on written submissions.

302.208 Petitions for oral presentation or judge's decision.

302.209 Procedures for deferral of applications.

302.210 Disposition of applications; orders establishing further procedures.

302.211 Procedures in certificate cases involving initial or continuing fitness.

302.212 Procedures in certificate cases involving international routes.

302.213 Procedures in foreign air carrier permit cases.

302.214 Oral evidentiary hearing.

302.215 Briefs to the administrative law judge.

302.216 Administrative law judge's initial or recommended decision.

302.217 Exceptions to administrative law judge's initial or recommended decision.

302.218 Briefs to the DOT decisionmaker.

302.219 Oral argument before the DOT decisionmaker.

302.220 Final decision of the Department.

### Subpart C--Rules Applicable to Exemption and Certain Other Proceedings

302.301 Applicability.

302.302 Filing of applications.

302.303 Contents of applications.

302.304 Service of documents.

302.305 Posting of applications.

302.306 Dismissal or rejection of incomplete applications.

302.307 Answers to applications.

302.308 Replies to answers.

302.309 Requests for hearing.

302.310 Exemptions on the Department's initiative.

302.311 Emergency exemptions.

### Subpart D--Rules Applicable to Enforcement Proceedings

302.401 Applicability.

302.402 Definitions.

302.403 Informal complaints.

302.404 Formal complaints.

302.405 Responsive documents.

302.406 Procedure for responding to formal complaints.

302.407 Commencement of enforcement proceeding.

302.408 Answers and replies.

302.409 Default.

302.410 Consolidation of proceedings.

302.411 Motions to dismiss and for summary judgment.

302.412 Admissions as to facts and documents.

302.413 Evidence of previous violations.

302.414 Prehearing conference.

302.415 Hearing.

302.416 Appearances by persons not parties.

302.417 Settlement of proceedings.

302.418 Motions for immediate suspension of operating authority pendente lite.

302.419 Modification or dissolution of enforcement actions.

302.420 Saving clause.

### Subpart E--Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

- 302.501 Applicability.
- 302.502 Institution of proceedings.
- 302.503 Contents and service of petition or complaint.
- 302.504 Dismissal of petition or complaint.
- 302.505 Order of investigation.
- 302.506 Complaints requesting suspension of tariffs; answers to such complaints.
- 302.507 Computing time for filing complaints.

**Subpart F--Rules Applicable to Proceedings Concerning Airport Fees**

- 302.601 Applicability.
- 302.602 Complaint by a carrier; request for determination by an airport owner or operator.
- 302.603 Contents of complaint or request for determination.
- 302.604 Answers to a complaint or request for determination.
- 302.605 Replies.
- 302.606 Review of complaints or requests for determination.
- 302.607 Decision by administrative law judge.
- 302.608 Petitions for discretionary review.
- 302.609 Completion of proceedings.
- 302.610 Final order.

**Subpart G--Rules Applicable to Mail Rate Proceedings and Mail Contracts**

- 302.701 Applicability.

**FINAL MAIL RATE PROCEEDINGS**

- 302.702 Institution of proceedings.
- 302.703 Order to show cause or instituting a hearing.
- 302.704 Objections and answers to order to show cause.
- 302.705 Further procedures.
- 302.706 Hearing.

**PROVISION FOR TEMPORARY RATE**

- 302.707 Procedure for fixing temporary mail rates.

**INFORMAL MAIL RATE CONFERENCE PROCEDURE**

- 302.708 Invocation of procedure.
- 302.709 Scope of conferences.
- 302.710 Participants in conferences.
- 302.711 Conditions upon participation.
- 302.712 Information to be requested from an air carrier.
- 302.713 DOT analysis of data for submission of answers thereto.
- 302.714 Availability of data to the U.S. Postal Service.
- 302.715 Post-conference procedure.
- 302.716 Effect of conference agreements.
- 302.717 Waiver of participant conditions.

**PROCESSING CONTRACTS FOR THE CARRIAGE OF MAIL IN FOREIGN AIR TRANSPORTATION**

- 302.718 Filing.
- 302.719 Explanation and data supporting the contract.
- 302.720 Service.
- 302.721 Complaints.
- 302.722 Answers to complaints.
- 302.723 Further procedures.
- 302.724 Petitions for reconsideration.
- 302.725

**§302.1 Applicability and description of part.**

(a) *Applicability.* This part governs the conduct of all aviation economic proceedings before the Department whether instituted by order of the Department or by the filing with the Department of an application, complaint, petition, motion, or other authorized or required document. This part also contains delegations to administrative law judges and to the DOT decisionmaker of the Department's function to render the agency decision in certain cases and the procedures for review of those decisions. This part applies unless otherwise specified by order of the Department.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to Subtitle VII of Title 49 of the United States Code (Transportation) ("the Statute"), and to the substantive rules, regulations and orders of the Department relating to the proceeding. Wherever there is any conflict between one of the general rules in subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

(c) *Reference to part and method of citing rules.* This part may be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, may be referred to as a "Rule". The number of each rule need include only the numbers and letters at the right of the decimal point. For example, "302.7 *Service of documents*", may be referred to as "Rule 7".

**§302.2 Definitions.**

*Administrative law judge* as used in this part means an administrative law judge appointed pursuant to 5 U.S.C. 3105.

*DOT Decisionmaker* as used in this part is the official authorized to issue final decisions of the Department as set forth in §302.18. This includes the Assistant Secretary for Aviation and International Affairs, the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, the Deputy Secretary, and the Secretary.

*Hearing case or oral hearing case* means any proceeding that the Department has determined will be conducted on the record using oral evidentiary procedures subject to 5 U.S.C. 556 and 557.

*Non-hearing case* means any proceeding not involving oral evidentiary procedures.

*Party* as used in this part includes the person initiating a proceeding, such as an applicant, complainant, or petitioner; any person filing an answer to such filing; and any other persons as set forth in §302.10.

*Statute* when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

**SUBPART A--RULES OF GENERAL APPLICABILITY**

**§302.3 Filing of documents.**

(a) *Filing address, date of filing, hours.*

(1) Documents required by any section of this part to be filed with the Department must be filed with Department of Transportation Dockets at the Department's offices in

Washington, DC. Documents may be filed either on paper or by electronic means using the process set at the DOT Dockets Management System (DMS) internet website.

(2) Such documents will be deemed to be filed on the date on which they are actually received by the Department. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight savings time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays. Electronic filings may be made at any time under the process set by the Department. Electronic filings that are received after the specified Dockets Facility hours shall be deemed to be constructively received on the next Dockets Facility business day.

(b) *Formal specifications of documents.*

(1) Documents filed under this part must be on white paper not larger than 8-1/2 by 11 inches, including any tables, charts and other documents that may be included. Ink must be black to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations which may be single-spaced) using type not smaller than 12 point. The left margin must be at least 1-1/2 inches; all other margins must be at least 1 inch. The title page and first page must bear a clear date and all subsequent pages must bear a page number and abbreviated heading. In order to facilitate automated processing in document sheet feeders, documents of more than one page should be held together with removable metal clips or similar retainers. Original documents may not be bound in any form or include tabs, except in cases assigned by order to an Administrative Law Judge for hearing, in which case the filing requirements will be set by order. Section 302.35 contains additional requirements as to the contents and style of briefs.

(2) Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications must be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original, along with the number of true copies set forth below for each type of proceeding, must be filed with Department of Transportation Dockets. The copies filed need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for signature. Electronic filers need only submit one copy of the document, which must conform to the submission requirements given in the electronic filing instructions at the specified DOT DMS internet website and in this part, as applicable.

Airport Fees.....	9 copies
Agreements:	
International Air Transport	
Association (IATA). ....	6 copies
Other (under 49 U.S.C. 41309) .....	9 copies
Complaints	
Enforcement .....	5 copies
Mail Contracts .....	4 copies
Rates, Fares and Charges in	
Foreign Air Transportation.....	6 copies
Unfair Practices in Foreign Air	
Transportation.....	7 copies
Employee Protection Program	
(14 CFR 314).....	7 copies

Exemptions

Computer Reservations Systems	
(14 CFR 255).....	8 copies
Slot Exemptions	
(under 49 U.S.C. 41714).....	7 copies
Tariffs (under 49 U.S.C. Chapter	
415 or 14 CFR 221).....	5 copies
Other (under 49 U.S.C. 40109) .....	7 copies
Foreign Air Carrier Permits/	
Exemptions .....	7 copies
International Authority for U.S. Air Carriers	
(certificates, exemptions, allocation	
of limited frequencies, designations,	
or charters).....	7 copies
Mail Rate Proceedings .....	4 copies
Name Change/Trade Name	
Registrations .....	4 copies
Suspension of Service (14 CFR 323).....	4 copies
Tariff Justifications to exceed Standard	
International Fare Level .....	6 copies
U.S. Air Carrier Certificates (involving	
Initial or Continuing Fitness) .....	6 copies
Other matters .....	3 copies

(d) *Prohibition and dismissal of certain documents.*

(1) No document that is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters will be accepted for filing by the Department, and will not be physically incorporated in the docket of the proceeding, unless:

(i) Such document and its filing by the person submitting it have been expressly authorized or required in the Statute, any other law, this part, other Department regulations, or any order, notice or other document issued by the DOT decisionmaker, the Chief Administrative Law Judge or an administrative law judge assigned to the proceeding, and

(ii) Such document complies with each of the requirements of this paragraph and 302.7, and for those electronically filed, the requirements specified at the DOT DMS internet website, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication; *Provided, however,* That for good cause shown, pleadings of any public body or civic organization or comments concerning tariff agreements that have not been docketed, may be submitted in the form of a letter.

(2) If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the Department as to the contents thereof, or is otherwise insufficient, the Department, on its own initiative, or on motion of any party, may reject, strike or dismiss such document, or require its amendment.

(e) *Official docket copy.* With respect to all documents filed under this part, the electronic record produced by the Department shall thereafter be the official docket copy of the document and any subsequent copies generated by the Department's electronic records system will be usable for admission as record copies in any proceeding before the Department.

(f) *Retention of documents by the Department.* All documents filed with or presented to the Department Dockets will be retained in the permanent docket of the Department of Transportation.

**§302.4 General requirements as to documents.**

(a) *Contents.* (1) In case there is no rule, regulation, or order of the Department that prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required, such document shall be accompanied by an Energy Statement, in conformity with the provisions of part 313 of this chapter.

(2)(i) Each document must include with or provide on its first page:

(A) The docket title and subject;

(B) The relevant operating administration before which the application or request is filed;

(C) The identity of the filer and its filing agent, if applicable;

(D) The name and mailing address of the designated agent for service of any documents filed in the proceeding, along with the telephone and facsimile numbers and, if available, electronic mail address of that person; and

(E) The title of the specific action being requested.

(ii) Department of Transportation Dockets has an Expedited Processing Sheet that filers can use to assist in preparing this index for submission of paper documents, and an electronic registration for electronic filing at the DOT DMS internet website.

(3) All documents filed under this part consisting of twenty (20) or more pages must contain a subject index of the matter in such document, with page references.

(b) *Verification:* The following certification shall be included with every pleading filed under this part: "Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the pleading, who shall be a principal owner, senior officer, or internal counsel of the pleader*], in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both." In addition, electronic subscription requirements shall be those specified at the DOT DMS internet website.

### **§302.5 Amendment of documents.**

(a) An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to the issuance of an order establishing further procedures, disposing of the application, or setting the case for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in §302.11.

(b) Except as otherwise provided, if properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

### **§302.6 Responsive documents.**

(a) *Answers.* Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any person. In hearing cases, answers may be

filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required.

(b) *Further responsive documents.* Except as otherwise provided, a reply to an answer, reply to a reply, or any further responsive document is not authorized.

(c) *Motions for leave to file otherwise unauthorized documents.*

(1) The Department will accept otherwise unauthorized documents for filing only if leave has been obtained from the DOT decisionmaker or, if applicable, the administrative law judge, on written motion and for good cause shown.

(2) Such motions shall contain a concise statement of the matters relied upon as good cause and shall be attached to the pleading or other document for which leave to file is sought, or the written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(3) Where unauthorized responsive documents are not permitted, all new matter contained in an answer filed pursuant to paragraph (a) of this section shall be deemed controverted.

(d) *Time for filing.* Except as otherwise provided, an answer, motion, or other further responsive document shall be filed within seven (7) days after service of any document, order, or ruling to which the proposed filing is responsive and must be served on all parties to the proceeding.

### **§302.7 Service of documents.**

(a) *Who makes service.*

(1) *The Department.* Formal complaints, notices, orders, and similar documents issued by the Department will be served by the Department upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with the Department shall be served by such party or other person upon all parties to the proceeding in which it is filed; including, where applicable, all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are filed. The Department may require additional service of any document(s).

(b) *How service may be made.* Service may be made by first class mail, express mail, priority mail, registered or certified mail, facsimile transmission, personal delivery, or by electronic mail. The Department may prescribe other means of service by order or notice. The means of service selected must be done in such manner so as to have the same attributes as section 46103 of the Statute, which provides for service of notices and processes in a proceeding by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with §302.4(a)(2)(iv) once a proceeding has been commenced.

(d) *Where service may be made.* Service shall be made at the principal place of business of the party to be served, or at his or her usual residence if he or she is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, or at the post office or electronic address or facsimile number stated for a person designated to receive service pursuant to §302.4(a)(2)(iv).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) A certificate of successful transmission executed by the person transmitting the document by facsimile or electronic mail, listing the facsimile numbers or electronic mail address to which the document was sent, and stating that no indication was received that any transmission had failed. In the event of an electronic transmission failure, any other authorized means of service may be substituted and the appropriate proof of service provided.

(f) *Date of service.* The date of service by post office or electronic mail is the date of mailing. Whenever proof of service by personal delivery or facsimile transmission is made, the date of such delivery or facsimile transmission shall be the date of service.

(g) *Freely Associated State Proceedings.* In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved. This requirement shall apply to all proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

#### **§302.8 Computation of time.**

In computing any period of time prescribed or allowed by this part, by notice, order or regulation or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Department, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or fewer, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation, unless otherwise specified by the DOT decisionmaker or the administrative law judge assigned to the proceeding, as the case may be.

#### **§302.9 Continuances and extensions of time.**

(a) Whenever a party has the right or obligation to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker or the administrative law judge assigned to the proceeding, as appropriate, may:

(1) Before the expiration of the prescribed period, with or without notice, extend such period, or

(2) Upon motion, permit the act to be done after the expiration of the specified period, where good cause for the failure to act on time is clearly shown.

(b) Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a) of this section, shall be directed to the DOT decisionmaker. Requests for

continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

#### **§302.10 Parties.**

(a) In addition to the persons set forth in §302.2, in hearing cases, parties shall include Department staff designated to participate in the proceeding and any persons authorized to intervene or granted permission to participate in accordance with §§302.19 and 302.20. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these governments or their designated authorities shall be a party.

(b) Upon motion and for good cause shown, the Department may order a substitution of parties, except that in case of the death of a party, substitution may be ordered without the filing of a motion.

(c) An association composed entirely or in part of air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply if the association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department. Upon motion of any interested person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the grounds of significant divergence of interest or position within the association.

#### **§302.11 Motions.**

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. If an administrative law judge is assigned to a proceeding and before the issuance of a recommended or initial decision or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times, motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein. This paragraph should not be construed as authorizing motions in the nature of petitions for reconsideration.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§302.3 and 302.4, shall state their grounds and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers to them, and rulings on them, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except where incorporation of a motion in another document is specifically authorized by the Department, or where a document is filed that requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately titled and identified to indicate that it incorporates a motion; otherwise, the motion will be disregarded.

(c) *Answers to motions.* Within seven (7) days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in

opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Requests for expedition.* Any interested person may by motion request expedition of any proceeding or file an answer in support of or in opposition to such motions.

(f) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time to take action fixed by this part or by any order of the Department or of an administrative law judge (or any extension granted thereunder).

(g) *Disposition of motions.* The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision. The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if the administrative law judge finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, the administrative law judge may refer such motion to the DOT decisionmaker for decision.

(h) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on a motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding or at any other appropriate time irrespective of the filing of an appeal or any action taken on it.

### **§302.12 Objections to public disclosure of information.**

(a) *Generally.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR 7.1 *et seq.*)

(b) *Information contained in written documents.* Any person who objects to the public disclosure of any information filed in any proceeding, or pursuant to the provisions of the Statute, or any Department rule, regulation, or order, shall segregate, or request the segregation of, such information into a separate submission and shall file it separately in a sealed envelope, bearing the caption of the enclosed submission, and the notation "Confidential Treatment Requested Under §302.12." At the time of filing such submission (or, when the objection is made by a person who is not the filer, within five (5) days after the filing of such submission), the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (d) or (f) of this section, as appropriate. Notwithstanding any other provision of this section, copies of

the filed submission and of the motion need not be served upon any other party unless so ordered by the Department.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and representative of each party as the administrative law judge or the person before whom the deposition is being taken shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation "Confidential Treatment Requested Under §302.12 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion in accordance with the procedure outlined in paragraph (d) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the Department.

(d) *Form of motion.* Motions to withhold from public disclosure information covered by paragraphs (b) and (c) of this section shall be filed with the Department in accordance with the following procedure:

(1) The motion shall include:

(i) An index listing the information or document sought to be withheld by an identifying number, and including its title, description and number of pages, and, if relevant, the specific location within a document;

(ii) A statement explaining how and why the information falls within one or more of the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)-(9)); and

(iii) A statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(2) Such motion shall be filed with the person conducting the proceeding, or with the person with whom said application, report, or submission is required to be filed. Such motion will be denied when the complete justification required by this paragraph is not provided.

(3) During the pendency of such motion, the ruling official may, by notice or order, allow limited disclosure to parties' representatives, for purposes of participating in the proceeding, upon submission by them of affidavits swearing to protect the confidentiality of the documents at issue.

(e) *Conditions of disclosure.* The order, notice or other action of the Department containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which ruling shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the Department's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by the Department, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the Department's order.

(f) *Objection by Government departments or representative thereof.* In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department or agency, or representative thereof, under paragraph (b) or (c) of this section, the department or agency making such objection shall be exempted from the provisions of paragraphs (b), (c), and (d) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, agency, or representative thereof may, if it so desires, file a memorandum setting forth the reasons why it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

### **§302.13 Consolidation of proceedings.**

(a) *Initiation of consolidations.* The Department, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although the Department may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and the Department will not undertake to search its docket for all applications that might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless the Department has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed within 21 days of the original application in the case of international route awards under section 41102 of the Statute (*see* §302.212), or, where a proceeding has been set for hearing before an administrative law judge, not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or consideration of issues that enlarge, expand, or otherwise change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion that is not timely filed, or that does not relate to an application pending at such time, shall be dismissed unless the movant shall clearly show good cause for failure to file such motion or application on time.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with the Department, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

### **§302.14 Petitions for reconsideration.**

(a) *Department orders subject to reconsideration; time for filing.* (1) Unless an order or a rule of the Department specifically provides otherwise:

(i) Any interested person may file a petition for reconsideration of any interlocutory order issued by the Department that institutes a proceeding; and

(ii) Any party to a proceeding may file a petition for reconsideration, rehearing, or reargument of final orders issued by the Department (*See* §302.38), or an interlocutory order that defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department.

(2) Unless otherwise provided, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for the movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If a decision by the Secretary or Deputy Secretary is requested, the petition should describe in detail the reasons for such request and specify any important national transportation policy issues that are presented. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto that exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by Department of Transportation Dockets.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition that has been considered or denied will not be entertained.

### **NON-HEARING PROCEEDINGS**

#### **§302.15 Non-hearing procedures.**

In cases where oral evidentiary hearing procedures will not be used, §302.17 through §302.37, relating to hearing procedures, shall not be applicable except to the extent that the DOT decisionmaker shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the public interest. References in these and other sections of this part to powers or actions by administrative law judges shall not apply.

## RULEMAKING PROCEEDINGS

### §302.16 Petitions for rulemaking.

Any interested person may petition the Department for the issuance, amendment, modification, or repeal of any regulation, subject to the provisions of part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 *et seq.*).

## ORAL EVIDENTIARY HEARING PROCEEDINGS

### §302.17 Administrative law judges.

#### (a) Powers and delegation of authority.

(1) An administrative law judge shall have the following powers, in addition to any others specified in this part:

- (i) To give notice concerning and to hold hearings;
- (ii) To administer oaths and affirmations;
- (iii) To examine witnesses;
- (iv) To issue subpoenas and to take or cause depositions to be taken;
- (v) To rule upon offers of proof and to receive relevant evidence;
- (vi) To regulate the course and conduct of the hearing;
- (vii) To hold conferences before or during the hearing for the settlement or simplification of issues;
- (viii) To rule on motions and to dispose of procedural requests or similar matters;
- (ix) To make initial or recommended decisions as provided in §302.31;
- (x) To take any other action authorized by this part or by the Statute.

(2) The administrative law judge shall have the power to take any other action authorized by part 385 of this chapter or by the Administrative Procedure Act.

(3) The administrative law judge assigned to a particular case is delegated the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without an initial or recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 41307 of the Statute. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters that have been appealed to the DOT decisionmaker in accordance with the requirements of §302.11.

(4) The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(b) *Disqualification.* An administrative law judge shall withdraw from the case if at any time he or she deems himself or herself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or

disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

### §302.18 DOT decisionmaker.

(a) *Assistant Secretary for Aviation and International Affairs.* Except as provided in paragraphs (b) and (c) of this section, the Assistant Secretary for Aviation and International Affairs is the DOT decisionmaker. The Assistant Secretary shall have all of the powers set forth in §302.17(a)(1) and those additional powers delegated by the Secretary. The Assistant Secretary may delegate this authority in appropriate non-hearing cases to subordinate officials.

(b) *Oral hearing cases assigned to the senior career official.* Carrier selection proceedings for international route authority that are set for oral hearing and such other oral hearing cases as the Secretary deems appropriate will be assigned to the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, who will serve as the DOT decisionmaker. In all such cases, the administrative law judge shall render a recommended decision to the senior career official, who shall have all of the powers set forth in §302.17(a)(1) and those additional powers delegated by the Secretary.

(1) Decisions of the senior career official are subject to review by, and at the discretion of, the Assistant Secretary for Aviation and International Affairs. Petitions for discretionary review of decisions of the senior career official will not be entertained. A notice of review by the Assistant Secretary will establish the procedures for review. Unless a notice of review is issued, the decision of the senior career official will be issued as a final decision of the Department and will be served fourteen (14) days after it is adopted by the senior career official.

(2) Final decisions of the senior career official may be reviewed upon a petition for reconsideration filed pursuant to §302.14. Such a petition shall state clearly the basis for requesting reconsideration and shall specify any questions of national transportation policy that may be involved. The Assistant Secretary will either grant or deny the petition.

(3) Upon review or reconsideration, the Assistant Secretary may either affirm the decision or remand the decision to the senior career official for further action consistent with such order of remand.

(4) Subject to the provisions of paragraphs (b)(1) through (3) of this section, final decisions of the senior career official will be transmitted to the President of the United States when required under 49 U.S.C. 41307.

(c) *Secretary and Deputy Secretary.* The Secretary or Deputy Secretary may exercise any authority of the Assistant Secretary whenever he or she believes a decision involves important questions of national transportation policy.

### §302.19 Participation by persons not parties.

Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence that is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements shall be filed and served on all parties prior to the close of the hearing.

### §302.20 Formal intervention.

(a) *Who may intervene.* Any person who has a statutory right to be made a party to an oral evidentiary hearing proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the public interest and will not unduly delay the conduct of such proceeding may be permitted to intervene.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered and will be liberally interpreted to facilitate the effective participation by members of the public in Department proceedings:

- (1) The nature of the petitioner's right under the statute to be made a party to the proceeding;
- (2) The nature and extent of the property, financial or other interest of the petitioner;
- (3) The effect of the order that may be entered in the proceeding on petitioner's interest;
- (4) The availability of other means whereby the petitioner's interest may be protected;
- (5) The extent to which petitioner's interest will be represented by existing parties;
- (6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and
- (7) The extent to which participation of the petitioner will broaden the issues or delay the proceeding.

(c) *Petition to intervene.* (1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he or she thinks he or she should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by the Department:

(i) A petition to intervene shall be filed with the Department prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(ii) A petition to intervene filed by a city, other public body, or a chamber of commerce shall be filed with the Department not later than the last day prior to the beginning of the hearing.

(iii) A petition to intervene that is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his or her failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by the Department that the intervening party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

### §302.21 Appearances.

(a) Any party to a proceeding may appear and be heard in person or by a designated representative.

(b) No register of persons who may practice before the Department is maintained and no application for admission to practice is required.

(c) Any person practicing or desiring to practice before the Department may, upon hearing and good cause shown, be suspended or barred from practicing.

### §302.22 Prehearing conference.

(a) *Purpose and scope of conference.* At the discretion of the administrative law judge, a prehearing conference may be called prior to any hearing. Written notice of the prehearing conference shall be sent by the administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define the issues and the scope of the proceeding, to secure statements of the positions of the parties and amendments to the pleadings, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

- (1) Matters that the DOT decisionmaker can consider without the necessity of proof;
- (2) Admissions of fact and of the genuineness of documents;
- (3) Requests for documents;
- (4) Admissibility of evidence;
- (5) Limitation of the number of witnesses;
- (6) Reducing of oral testimony to exhibit form;
- (7) Procedure at the hearing; and
- (8) Use of electronic media as a basis for exchange of briefs, hearing transcripts and exhibits, etc., in addition to the official record copy.

(b) *Actions during prehearing conference.* The administrative law judge may require a further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to a hearing by subpoena issued in accordance with the provisions of §302.25 as though at a hearing. Applications for the production prior to hearing of documents in the Department's possession shall be addressed to the administrative law judge, in accordance with the provisions of §302.25(g), in the same manner as provided therein for production of documents at a hearing. The administrative law judge may also, on his or her own initiative or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(c) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his or her report in the light of the objections presented. The revised report, if any,

shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection that has not been met by a revision of the report if the exceptions are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

**§302.23 Hearing.**

The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

**§302.24 Evidence.**

(a) *Presenting evidence.* Presenting evidence at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice, and shall not be unduly repetitious. Evidence shall be presented in such form by all parties as the administrative law judge may direct.

(b) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(c) *Exhibits.* When exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing. Copies of exhibits may, at the discretion of the administrative law judge or the DOT decisionmaker, be furnished by use of electronic media in lieu of or in addition to a paper record copy.

(d) *Substitution of copies for original exhibits.* In his or her discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(e) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such submission will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the submission, and to offer in evidence in like manner other portions of the exhibit.

(f) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified;

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker;

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (f)(1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the requirement in paragraph (f)(3) of this section with the consent of the parties.

(g) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and the administrative law judge to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to subpart D of this part. Each such category shall include any document antedating the final Department decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

(i) Air carrier certificates or applications therefor, together with any requests for amendment, and pleadings responding to applications when properly filed.

(ii) All Form 41 reports required to be filed by air carriers with the Department.

(iii) Reports of Traffic and Financial Data of all U.S. Air Carriers issued by the Civil Aeronautics Board (CAB) or the Department.

(iv) Airline Traffic Surveys and Passenger Origin-Destination Surveys, Domestic and International, compiled by the CAB or the Department and published and/or made available either to the public or to parties in proceedings.

(v) Compilations of data relating to competition in the airline industry and made available to the public by the CAB or the Department, such as the 1990 Airline Competition Study.

(vi) Passenger, mail, express, and freight data submitted to the CAB or the Department as part of ER-586 Service Segment Data by U.S. carriers, or similar data submitted to the Department by U.S. air carriers (T-100) or by foreign air carriers (T-100F) that is not confidential.

(vii) All tariffs, including the electronic versions, and amendments thereof, of all air carriers, on file with the Department.

(viii) Service Mail Pay and Subsidy for U.S. Certificated Air Carriers published by the CAB and any supplemental data and subsequent issues published by the CAB or the Department.

(ix) Airport Activity Statistics of Certificated Air Carriers compiled and published by the Federal Aviation Administration (FAA) or the Department.

(x) Air Traffic Activity Data issued by the FAA.

(xi) National Plan of Integrated Airport Systems (NPIAS) issued by the FAA.

(xii) Airport Facilities Directory, Form 5010, issued by the FAA.

(xiii) The Airman's Information Manual issued by the FAA.

(xiv) ICAO Statistical Summary, Preliminary Issues and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by ICAO, Montreal, Canada, with all changes and additions.

(xv) Monthly, quarterly and annual reports of the Immigration and Naturalization Service, U.S. Department of Justice.

(xvi) All forms and reports required by the U.S. Postal Service to be filed by air carriers authorized to transport mail.

(xvii) All orders of the Postmaster General designating schedules for the transportation of mail.

(xviii) Publications of the Bureau of the Census of the U.S. Department of Commerce (DOC) relating, but not necessarily limited, to population, manufacturing, business, statistics, and any yearbooks, abstracts, or similar publications published by DOC.

(xix) ABC World Airways Guide and all Official Airline Guides, including the North American, Worldwide, All-Cargo and quick reference editions, including electronic versions.

(xx) Official Guide of the Railways and Russell's Official National Motor Coach Guide.

(xxi) The Rand McNally Commercial Atlas and Marketing Guide, and the Rand McNally Road Atlas, United States, Canada, and Mexico.

(xxii) Survey of Buying Power published by Sales Management Magazine.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (g)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (g)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters that have been noticed.

(h) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge or the DOT decisionmaker.

(i) *Exceptions.* Formal exceptions to the rulings of the administrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he or she desires the administrative law judge to take or his or her objection to an action taken, and his or her grounds therefor.

(j) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall

consist of a statement of the substance of the evidence that counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

#### **§302.25 Subpoenas.**

(a) An application for a subpoena requiring the attendance of a witness at a hearing or the production of documentary evidence may be made without notice by any party to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge, for action.

(b) An application for a subpoena shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge.

(c) All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpoena sought that, in the case of evidence, shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible, or, in the case of a witness, the name of the witness and a general description of the matters concerning which the witness will be asked to testify.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpoena shall issue the subpoena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpoena.

(e) Where it appears during the course of a proceeding that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge, Chief Administrative Law Judge or DOT decisionmaker may issue on his or her own initiative a subpoena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpoenas issued under this section shall be served upon the person to whom directed in accordance with §302.7(b). Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the administrative law judge or, in the event an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge for action. If the person to whom the motion to modify or quash the subpoena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his or her final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the Chief Administrative Law Judge denying a motion to quash a subpoena. In such cases, the DOT decisionmaker may order that the return date of a subpoena be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. The attendance of DOT employees and the production of

documentary evidence in their custody are governed by 49 CFR Parts 9 and 7, respectively.

**§302.26 Depositions.**

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned to a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing,

(2) The deposition is deemed necessary to perpetuate the testimony of the witness, or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or Chief Administrative Law Judge, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the administrative law judge, the DOT decisionmaker, or the Chief Administrative Law Judge, as the case may be, may, in his or her discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the designated officer shall include argument or debate. Objections to questions or evidence shall be noted by the designated officer upon the deposition, but he or she shall not have power to decide on the competency or materiality or relevance of evidence, and he or she shall record the evidence subject to objection. Objections to questions or evidence not made before the designated officer shall not be deemed waived unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the designated officer, or under his or her direction, after which the deposition shall be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the designated officer. If the deposition is not signed by the witness, the designated officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to Department of Transportation Dockets and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will be authorized only if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his or her objections, if any, to such interrogatories and may file such cross-interrogatories as he or she desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his or her objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a reporter, and the designated officer shall be present at the examination of the witness, which fact shall be certified by the designated officer, who shall ask the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness's own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of §302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the reporter, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence shall constitute a part of the record in such proceeding upon which a decision may be based.

**§302.27 Rights of witnesses; attendance fees and mileage.**

(a) Any person appearing as a witness in any proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may be accompanied, represented, and advised by counsel and may be examined by that counsel after other questioning.

(b) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may retain, or, on payment of lawfully prescribed costs, procure, a copy of any document so submitted or a copy of any transcript made of such testimony.

(c) No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpoena unless upon a service of the subpoena he or she is tendered attendance fees and mileage by the party at whose instance he or she is called in accordance with the requirements of paragraphs (c)(1) and (2) of this section; *Provided*, That a witness summoned at the instance of the Department or one of its employees, or a salaried employee of the United States

summoned to testify as to matters related to his or her public employment, need not be tendered such fees or mileage at that time.

(1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same per diem, subsistence, and mileage fees paid to witnesses for like service in the courts of the United States that are in effect at the time of travel; *Provided*, That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 41511 of the Statute shall be entitled to any fees or mileage; *And provided further*, That such fees and mileage shall not be applicable for witnesses summoned to testify in Alaska, and that, in Alaska, where permitted by section 41511 of the Statute, the witness may, at his or her option, accept a pass for travel by air. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence, and mileage from the Government before the close of the proceedings that they are required to attend. Only persons summoned by subpoena shall be entitled to claim attendance fees, subsistence, or mileage from the Government.

(2) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

#### **§302.28 Transcripts of hearings.**

(a) Hearings shall be recorded and transcribed under supervision of the administrative law judge, by a reporting firm under contract with the Department. Copies of the transcript that may, at the discretion of the administrative law judge, be furnished by use of electronic media in addition to the official copy, shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(b) The administrative law judge shall determine whether "ordinary transcript" or "daily transcript" (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and the Department will pay the reporting firm the cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

- (1) The nature of the proceeding itself;
- (2) The DOT decisionmaker's needs as well as the reasonable needs of the parties;
- (3) The cost to the Department; and
- (4) The requirements of a fair hearing.

(c) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with the Department, the reporting firm will be obligated to furnish to the Department daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm

at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(d) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which the Department currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(e) Copies of transcripts ordered by parties other than the Department shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, electronic media, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(f) Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with Department of Transportation Dockets, within ten (10) days after receipt of the completed transcript by the Department. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the reporter's record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

#### **§302.29 Argument before the administrative law judge.**

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either on his or her own motion or at the request of a party, permit the presentation of oral argument, and may impose such time limits on the argument as he or she may determine appropriate. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the Department decisionmaker for consideration in deciding the case.

#### **§302.30 Briefs to the administrative law judge.**

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs which may include proposed findings of fact and conclusions of law that shall contain exact references to the record and authorities relied upon.

#### **§302.31 Initial and recommended decisions; certification of the record.**

(a) *Action by administrative law judge after hearing.* Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of briefs which may include proposed findings of fact and conclusions of law, if any, the administrative law judge shall take the following action:

(1) *Initial decision.* If the proceeding does not involve foreign air transportation, the administrative law judge shall render an “initial decision.” Such decision shall encompass the administrative law judge’s decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(2) *Recommended decision.* In cases where the action of the Department involves foreign air transportation and is subject to review by the President of the United States pursuant to section 41307 of the Statute, the administrative law judge shall render a “recommended decision.” Such decision shall encompass the administrative law judge’s decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render a decision but shall make a recommendation to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act (5 U.S.C. 558(a)) unless advised by the DOT decisionmaker that he or she intends to issue a tentative decision.

(c) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every such decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (d) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file with the DOT decisionmaker briefs which may include proposed findings of fact and conclusions of law.

(d) Unless a petition for discretionary review is filed pursuant to §302.32, exceptions are filed pursuant to §302.217, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department thirty (30) days after service thereof; in the case of a recommended decision, that decision shall be transmitted to the President of the United States under 49 U.S.C. 41307. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision or the transmission of the recommended decision is stayed until the further order of the DOT decisionmaker.

**§302.32 Petitions for discretionary review of initial or recommended decisions; review proceedings.**

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but is at the sole discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within twenty-one (21) days after service thereof, unless the DOT decisionmaker sets a different period for filing.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

- (i) A finding of a material fact is erroneous;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, the Department’s rules, or precedent;
- (iii) A substantial and important question of law, policy or discretion is involved; or
- (iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but that the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker, petitions shall not exceed twenty (20) pages including appendices and other papers physically attached to the petition.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answers.* Within fifteen (15) days after service of a petition for discretionary review, any party may file and serve an answer of not more than fifteen (15) pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he or she shall do so in a single document of not more than twenty (20) pages.

(c) *Orders declining review.* The DOT decisionmaker’s order declining to exercise the discretionary right of review will specify the date upon which the administrative law judge’s decision shall become effective as the final decision of the Department. A petition for reconsideration of a Department order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker’s discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of the Department in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may take review of an initial or recommended decision upon petition or on his or her own initiative or both. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review that will:

- (i) Specify the issues to which review will be limited. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to §302.35, and considered by the DOT decisionmaker;
- (ii) Specify the portions of the administrative law judge’s decision, if any, that are to be stayed as well as the effective date of the remaining portions thereof; and
- (iii) Designate the parties to the review proceeding.

**§302.33 Tentative decision of the DOT decisionmaker.**

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any briefs submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision and briefs, if any, in support of or in opposition to the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed, it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) The DOT decisionmaker may, in his or her discretion, omit a tentative decision in proceedings under subpart B. Final decisions of the DOT decisionmaker are subject to review as provided in §302.18.

#### **§302.34 Exceptions to tentative decisions of the DOT decisionmaker.**

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto; *Provided, however,* That exceptions shall specify any matters of law, fact, or policy that were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion that is not expressly made the subject of an exception in compliance with the provisions of this section; *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

#### **§302.35 Briefs to the DOT decisionmaker.**

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his or her exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to §302.32(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within thirty (30) days after date of service of the order granting discretionary review unless

otherwise specified in the order. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs.* (1) *Contents.* Each brief shall discuss every point of law, fact, or precedent that the party submitting it is entitled to raise and that it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed five (5) pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations, or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved. Copies of briefs may be furnished by use of electronic media in a format acceptable to the Department and the parties.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading; *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with Department of Transportation Dockets a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length.* Except by permission or direction of the DOT decisionmaker, briefs shall not exceed fifty (50) pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case "map" means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation.

#### **§302.36 Oral argument before the DOT decisionmaker.**

(a) If any party desires to argue a case orally before the DOT decisionmaker, he or she shall request leave to make such argument in his or her exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and, if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be offered to the DOT decisionmaker at oral argument only in accordance

with the following rules: All such material shall be limited to facts in the record of the case being argued and shall be served on all parties to the proceeding with four (4) copies transmitted to Department of Transportation Dockets at least five (5) calendar days in advance of the argument.

**§302.37 Waiver of procedural steps after hearing.**

The parties to any proceeding may agree to waive any one or more of the procedural steps provided in §302.29 through §302.36.

**§302.38 Final decision of the DOT Decisionmaker.**

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order that will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed “final orders” within the purview of §302.14(a), in the manner provided by §302.18.

**SUBPART B--RULES APPLICABLE TO U.S. AIR CARRIER CERTIFICATE AND FOREIGN AIR CARRIER PERMIT LICENSING PROCEEDINGS**

**§302.201 Applicability.**

(a) This subpart sets forth the specific rules applicable to proceedings on:

(1) U.S. air carrier certificates of public convenience and necessity and U.S. all-cargo air service certificates under Chapter 411 of the Statute, including renewals, amendments, modifications, suspensions and transfers of such certificates.

(2) Foreign air carrier permits under Chapter 413 of the Statute, including renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) Except as modified by this subpart, the provisions of subpart A of this part apply.

**§302.202 Contents of applications.**

(a) Certificate applications filed under this subpart shall contain the information required by part 201 of this chapter and, where applicable, part 204 of this chapter, and foreign air carrier permit applications shall contain the information required by part 211 of this chapter, along with any other information that the applicant desires the Department to notice officially.

(b) Applications shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) Applications shall include a list of the names and addresses of all persons who have been served in accordance with §302.203.

(d) Where required, each application shall be accompanied by an Energy Statement in conformity with part 313 of this chapter.

**§302.203 Service of documents.**

(a) *General requirements.* (1) Applicants shall serve on the persons listed in paragraph (b) of this section a notice that an application has been filed, and upon request shall promptly provide those persons with copies of the application and

supporting documents. The notice must clearly state the authority sought and the due date for other pleadings.

(2) Applicants shall serve a complete copy of the application on the Manager of the FAA Flight Standards District Office responsible for processing the application for any FAA authority needed to conduct the proposed operations.

(3) After an order under §302.210 has been issued, parties need only serve documents on those persons listed in the service list accompanying the order.

(4) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a)(1) of this section on all persons served by the original applicant.

(b) *Persons to be served--*

(1) *U.S. air carriers.* (i) In certificate proceedings, except for those proceedings that involve charter-only authority under section 41102(a)(3) of the Statute:

(A) Applicants for certificates to engage in interstate air transportation and other persons who file a pleading in the docket shall serve:

(1) The airport authority of each airport that the applicant initially proposes to serve, and

(2) Any other person who has filed a pleading in the docket.

(B) Applicants for certificates to engage in foreign air transportation and other persons who file a pleading in the docket shall serve:

(1) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(2) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(3) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings involving charter-only authority under 41102(a)(3) of the Statute, applicants and other persons who file a pleading in the docket shall serve any other person who has filed a pleading in the docket.

(2) *Foreign air carriers.* (i) In permit proceedings, except for those proceedings involving charter-only authority, applicants and other persons who have filed a pleading in the docket shall serve:

(A) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(B) The U.S. Department of State,

(C) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(D) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority, applicants and other persons who file a pleading in the docket shall serve the U.S. Department of State and any other person who has filed a pleading in the docket.

(c) *Additional service.* The Department may, at its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the

President and the designated authorities of the government(s) involved.

**§302.204 Responsive documents.**

(a) Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Except as otherwise provided in §302.212(d), answers shall be filed within twenty one (21) days of the original or amended application and shall be served in accordance with §302.203.

(b) Replies to answers shall be filed within fourteen (14) days after the filing of the answer.

(c) Persons having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

**§302.205 Economic data and other facts.**

Whenever economic data and other facts are provided in any pleading, such information shall include enough detail so that final results can be obtained without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

**§302.206 Verification.**

Any pleading filed under this subpart shall include a certification as provided in §302.4(b).

**DISPOSITION OF APPLICATIONS**

**§302.207 Cases to be decided on written submissions.**

(a) Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition as provided in §302.208 or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required because:

- (1) Use of written procedures will prejudice a party;
- (2) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or
- (3) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

(b) The standards employed in deciding cases under §302.210(a)(1) or (5) shall be the same as the standards applied in cases decided under §302.210(a)(4). These are the standards set forth in the Statute as interpreted and expanded upon under that Statute.

**§302.208 Petitions for oral presentation or judge's decision.**

(a) Any person may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in §302.207 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

- (1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs;
- (2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision;
- (3) An estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and

(4) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(b) Petitions for an oral hearing, oral argument, or an administrative law judge's decision shall be filed no later than the due date for answers in proceedings governed by §302.211, §302.212 and §302.213, and be accompanied with the information specified in paragraphs (a)(1) and (a)(2) of this section. Filing of the information required in paragraphs (a)(3) and (a)(4) of this section may be deferred until the DOT decisionmaker has decided to hold a formal proceeding.

(c) Where a stipulation of disputed facts would eliminate the need for an oral presentation or an administrative law judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

**§302.209 Procedures for deferral of applications.**

Within twenty-eight (28) days after the filing of an application under this subpart, the DOT decisionmaker may defer further processing of the application until all of the information necessary to process that application is submitted. The time periods contained in this subpart with respect to the disposition of the application shall not begin to run until the application is complete. In addition, the DOT decisionmaker may defer action on a foreign air carrier permit application for foreign policy reasons.

**§302.210 Disposition of applications; orders establishing further procedures.**

(a) *General requirements.* The DOT decisionmaker will take one of the following actions with respect to all or any portion of each application:

- (1) Issue an Order to Show Cause why the application should not be granted, denied or dismissed, in whole or in part.
- (2) Issue a Final Order granting the application if the DOT decisionmaker determines that there are no material issues of fact that warrant further procedures for their resolution.
- (3) Issue a Final Order dismissing or rejecting the application for lack of prosecution or if the application does not comply with this subpart or is otherwise materially deficient.

(4) Issue an order setting the application for oral evidentiary hearing. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. All of the procedures set forth in §302.214 through §302.218 will apply unless the DOT decisionmaker decides otherwise.

(5) Begin to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker may indicate which, if any, of the procedural steps set forth in §302.215 through §302.219 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(b) *Additional evidence.* An order establishing further procedures under paragraph (a)(1), (4) or (5) of this section may provide for the filing of additional evidence.

(c) *Petitions for reconsideration.* Petitions for reconsideration of an order issued under this section will not be entertained except to the extent that the order dismissed or

rejected all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in §302.220 will be calculated from the date of the order reinstating the application.

**§302.211 Procedures in certificate cases involving initial or continuing fitness.**

(a) *Applicability.* This section applies to cases involving certificate authority under sections 41102 and 41103 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such certificates, where the issues involve a determination of the applicant's fitness to operate. Where such applications propose the operation of scheduled service in limited entry international markets, the provisions of §302.212 also apply.

(b) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will take action as provided in §302.210.

**§302.212 Procedures in certificate cases involving international routes.**

(a) *Applicability.* This section applies to cases involving certificates under section 41102 of the Statute that involve international routes, including applications to obtain, renew, amend, transfer, or remove restrictions in such certificates.

(b) *Answers to applications.* Answers shall be filed within twenty one (21) days after the filing of the original application.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application to obtain, renew, or amend a certificate filed under paragraph (a) of this section. Requests to modify the issues to be decided and to consolidate applications filed in other dockets shall be filed as a "motion to modify scope." Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within twenty one (21) days after the original application is filed. Later-filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) *Answers to conforming applications or motions to modify scope.* Answers to conforming applications and motions to modify scope filed in accordance with paragraph (b) of this section shall be filed within fourteen (14) days after the filing of the conforming application or motion. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and includes the information prescribed in §302.202. Answers and applications shall not, however, propose the consideration of additional markets.

(e) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will issue an order as provided in §302.210.

**§302.213 Procedures in foreign air carrier permit cases.**

(a) *Applicability.* This section applies to cases involving foreign air carrier permits under section 41302 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) *Executive departments.* In addition to the standards set forth in §302.207(b), the views of other executive agencies, such as the Department of State, and the Federal Aviation Administration's evaluation of the applicant's operational fitness, may be sought in determining the appropriate action on applications filed under this section.

(c) *Order establishing further procedures.* As soon as possible after the date that answers are due and all information needed to reach a decision is filed, the DOT decisionmaker will issue an order as provided in §302.210.

**§302.214 Oral evidentiary hearing.**

If the DOT decisionmaker determines under §302.210(a)(4) that an oral evidentiary hearing should be held, the application or applications will be set for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures. The procedures in §302.17 to §302.38 governing the conduct of oral evidentiary hearings will apply.

**§302.215 Briefs to the administrative law judge.**

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) Fourteen (14) days after the close of the oral evidentiary hearing, unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) Fourteen (14) days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the DOT decisionmaker determines that some other period should be allowed.

**§302.216 Administrative law judge's initial or recommended decision.**

(a) In a case that has been set for oral evidentiary hearing under §302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within one hundred thirty-six (136) days after the issuance of the order establishing further procedures unless:

(1) The DOT decisionmaker, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than thirty (30) days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case, the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under §302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) The initial or recommended decision shall be issued by the administrative law judge fourteen (14) days after it is served. Unless exceptions are filed under §302.217 or the DOT decisionmaker issues an order to review on his or her own initiative, an initial decision shall become effective as the final order of the Department the day it is issued. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the

initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of §302.31 shall apply.

**§302.217 Exceptions to administrative law judge's initial or recommended decision.**

(a) Within seven (7) days after service of any initial or recommended decision of an administrative law judge, any party may file exceptions to the decision with the DOT decisionmaker.

(b) If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

(c) In all other respects, the provisions of §302.34 shall apply.

**§302.218 Briefs to the DOT decisionmaker.**

(a) In a case in which an initial or recommended decision has been served and exceptions have been filed, any party may file a brief in support of or in opposition to any exceptions. Such briefs shall be filed within fourteen (14) days after service of the initial or recommended decision.

(b) In a case in which no exceptions have been filed, briefs shall not be filed unless the DOT decisionmaker has taken review of the initial or recommended decision on his or her own initiative and has specifically provided for the filing of such briefs.

(c) In all other respect, the provisions of §302.35 shall apply.

**§302.219 Oral argument before the DOT decisionmaker.**

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be notified of the date and hour set for that argument and the amount of time allowed each party. The provisions of §302.36(b) shall also apply.

**§302.220 Final decision of the Department.**

In addition to the provisions of §302.38, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under §302.210(a)(4), the Department will issue its final order within ninety (90) days after the initial or recommended decision is issued. If an application has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section:

(1) in the case of an application for a certificate to engage in foreign air transportation, the recommended decision shall be transmitted to the President of the United States under 49 U.S.C. 41307; or

(2) in the case of an application not subject to review by the President of the United States, the initial decision shall become effective as the final order of the Department.

(c) In the case of a certificate application that has been processed under §302.210(a)(1) or (5), the Department will issue its final order within one hundred eighty (180) days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the

due date for a final decision for a period equal to the period of delay caused by the applicant.

**SUBPART C--RULES APPLICABLE TO EXEMPTION AND CERTAIN OTHER PROCEEDINGS**

**§302.301 Applicability.**

(a) This subpart sets forth the specific rules applicable to proceedings for exemptions under sections 40109 and 41714 of the Statute, including the granting of emergency exemptions, as well as applications for frequency allocations and other limited authority under international agreements. Except as modified by this subpart, the provisions of subpart A of this part apply.

(b) Proceedings for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

**§302.302 Filing of applications.**

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§302.3 and 302.4.

(b) Applications for exemption from section 41101 or 41301 of the Statute (including those that incorporate an exemption from section 41504) that involve ten (10) or fewer flights may be submitted to the U.S. Air Carrier Licensing Division or the Foreign Air Carrier Licensing Division (as appropriate), Office of International Aviation, on OST Form 4536. However, that form may not be used for:

(1) Applications filed under section 40109(g) of the Statute;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from the Department, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the Department for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than ten (10) flights; or

(4) Any other application for which the Department decides the requirements of §§302.3 and 302.4 are more appropriate. Upon a showing of good cause, an application may be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such telephonic requests must be confirmed by written application within three (3) business days of the original request.

(c) Applications for exemption from Chapter 415 of the Statute, from tariffs (except for waivers filed under subpart Q of part 221 of this chapter), or from Department regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to Department of Transportation Dockets. Upon a showing of good cause, the application may also be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such requests must be confirmed by written application within three (3) business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The Department may require such applications to be docketed if appropriate. The Department will publish a notice of such applications in its Weekly List of Applications Filed.

**§302.303 Contents of applications.**

(a) *Title.* An application filed under §302.302(a) shall be entitled "Application for . . ." (followed by the type of authority request, e.g., exemption, frequency allocation) and, where applicable, shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) *Factual statement.* Each application shall state:

(1) The section(s) of the Statute or the rule, regulation, term, condition, or limitation from which the exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 41101 or 41301 of the Statute should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations that the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the Department to officially notice;

(ii) Affidavits, or statements under penalty of 18 U.S.C. 1001, establishing any other facts the applicant wants the Department to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 41101 or 41301 of the Statute (except exemptions under section 40109(g)) shall state whether the authority sought is governed by a bilateral agreement or by principles of comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been established by the Department and cite the pertinent finding. If the fact of reciprocity has not been established by the Department, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 40109(g) of the Statute shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 41102 of the Statute;

(2) All possible efforts have been made to accommodate the traffic by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid unreasonable hardship for the traffic in the market that cannot be accommodated by air carriers; and

(4) In any case where an inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an unreasonable advantage to any party in the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption or other limited authority under this subpart that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by §302.304.

#### **§302.304 Service of documents.**

(a) *General requirements.* (1) An application for exemption and responsive pleadings shall be served as provided by §302.7.

(2) Applicants shall serve on the persons listed in paragraph (b) of this section a complete copy of the application and any supporting documents. Responsive pleadings shall be served on the same persons as applications.

(b) *Persons to be served.* (1) Applicants for scheduled interstate air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the city-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41305 or 40109 of the Statute.

(2) Applicants for scheduled foreign air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute. However, applicants that file fewer than sixteen (16) days prior to the proposed start of service must also serve:

(i) Those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and

(ii) Those persons who may be presumed to have an interest in the subject matter of the application.

(4) Applicants for slot exemptions under section 41714 of the Statute shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the airport(s) specified in the application,

(ii) The manager of each of the affected airports,

(iii) The mayor of the city that each affected airport serves,

(iv) The Governor of the State in which each affected airport is located, and

(v) Any other person who has filed a pleading in a related proceeding under section 41714 of the Statute.

(5) *Additional service.* The Department may, in its discretion, order additional service upon any other person.

**§302.305 Posting of applications.**

A copy of every docketed application for exemption shall be posted in Department of Transportation Dockets and listed in the Department's Weekly List of Applications Filed. A copy of every undocketed application shall be posted in the Licensing Division's lobby of the Office of International Aviation.

**§302.306 Dismissal or rejection of incomplete applications.**

(a) *Dismissal or rejection.* The Department may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) *Additional data.* The Department may require the filing of additional data with respect to any application for exemption, answer, or reply.

**§302.307 Answers to applications.**

Within fifteen (15) days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the Department is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

**§302.308 Replies to answers.**

Within seven (7) days after the last day for filing an answer, any interested party may file a reply to one or more answers.

**§302.309 Requests for hearing.**

The Department will not normally conduct oral evidentiary hearings concerning applications for exemption. However, the Department may, in its discretion, order such a hearing on an application. Any applicant, or any person opposing an application, may request an oral evidentiary hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the Department orders an oral evidentiary hearing, the procedures in subpart A of this part shall apply.

**§302.310 Exemptions on the Department's initiative.**

The Department may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

**§302.311 Emergency exemptions.**

(a) *Shortened procedures.* When required by the circumstances and consistent with the public interest, the Department may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the Department may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b) (1) *Applications.* Applications for emergency exemption need not conform to the requirements of this subpart or of subpart A of this part (except as provided in this section and in §302.303(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the

exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The Department may require additional information from any applicant before acting on an application.

(2) *Oral requests.* The Department will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three (3) business days of the original request.

(c) *Notice.* Except when the Department decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in §302.304(b) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the Department.

**SUBPART D--RULES APPLICABLE TO ENFORCEMENT PROCEEDINGS**

**§302.401 Applicability.**

This subpart contains the specific rules that apply to Department proceedings to enforce the provisions of Subtitle VII of the Statute, and the rules, regulations, orders and other requirements issued by the Department, as well as the filing of informal and formal complaints. Except as modified by this subpart, the provisions of subpart A of this part apply.

**§302.402 Definitions.**

*Assistant General Counsel*, when used in this subpart, refers to the Assistant General Counsel for Aviation Enforcement and Proceedings.

*Complainant* refers to the person filing a complaint.

*Parties*, when used in this subpart, include the Office of the Assistant General Counsel, the respondent, the complainant, and any other person permitted to intervene under §302.20.

*Respondent* refers to the person against whom a complaint is filed.

**§302.403 Informal Complaints.**

Any person may submit in writing to the Assistant General Counsel an informal complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Statute or any requirement established thereunder. Such informal complaints need not otherwise comply with the provisions of this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of an enforcement proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

**§302.404 Formal complaints.**

(a) *Filing.* Any person may make a formal complaint to the Assistant General Counsel about any violation of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of §302.3 and §302.4, concerning the form and filing of documents. The filing of a complaint shall result in the institution of an enforcement proceeding only if the Assistant General Counsel issues a notice instituting such a proceeding as to all or part of the complaint under §302.406(a) or the Deputy General Counsel does so under §302.406(c).

(b) *Amendment.* A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under §302.11.

(c) *Insufficiency of formal complaint.* In any case where the Assistant General Counsel is of the opinion that a complaint does not sufficiently set forth matters required by any applicable rule, regulation or order of the Department, or is otherwise insufficient, he or she may advise the complainant of the deficiency and require that any additional information be supplied by amendment.

(d) *Joinder of complaints or complainants.* Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The Assistant General Counsel may separate or split complaints if he or she finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of the Department's business or the ends of justice.

(e) *Service.* A formal complaint, and any amendments thereto, shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel.

#### **§302.405 Responsive documents.**

(a) *Answers.* Within fifteen (15) days after the date of service of a formal complaint, each respondent shall file an answer in conformance with and subject to the requirements of §302.408(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for good cause shown.

(b) *Offers to satisfy.* A respondent in a formal complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(c) *Motions to dismiss.* Motions to dismiss a formal complaint shall not be filed prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

#### **§302.406 Procedure for responding to formal complaints.**

(a) Within a reasonable time after an answer to a formal complaint is filed, the Assistant General Counsel shall either:

(1) Issue a notice instituting a formal enforcement proceeding in accordance with §302.407 or

(2) Issue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) An order dismissing a complaint issued pursuant to paragraph (a)(2) of this section shall become effective as a final order of the Department thirty (30) days after service thereof.

(c) Whenever the Assistant General Counsel has failed to act on a formal complaint within a reasonable time after an answer is due, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute an enforcement proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(d) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

#### **§302.407 Commencement of enforcement proceeding.**

(a) Whenever in the opinion of the Assistant General Counsel there are reasonable grounds to believe that any economic regulatory provision of the Statute, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that efforts to satisfy a complaint as provided by §302.405 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel may issue a notice instituting an enforcement proceeding before an administrative law judge.

(b) The notice shall incorporate by reference the formal complaint submitted pursuant to §302.404 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant.

(c) The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures that it may deem necessary or proper.

(d) Whenever the Assistant General Counsel seeks an assessment of civil penalties in an enforcement proceeding, he or she shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting a formal enforcement proceeding or in a separate document.

(e) In any proceeding in which civil penalties are sought, any decisions issued by the Department shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

#### **§302.408 Answers and replies.**

(a) Within fifteen (15) days after the date of service of a notice issued pursuant to §302.407, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with §302.405. Any requests for extension of time for filing of an answer to such complaint shall be filed in accordance with §302.11.

(b) All answers shall be served in accordance with §302.7 and shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the respondent is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted. Any answer to a complaint, or response to a notice, proposing the assessment of civil penalties shall specifically present any matters that the respondent intends to rely upon in opposition to, or in mitigation of, such civil penalties.

(c) The DOT decisionmaker or the administrative law judge may, in his or her discretion, require or permit the filing of a reply in appropriate cases; otherwise, no reply may be filed.

#### **§302.409 Default.**

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by §302.408 shall be deemed to authorize the DOT decisionmaker or administrative law judge, as a matter of discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting a formal enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, as a matter of discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order; *Provided*, that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

#### **§302.410 Consolidation of proceedings.**

The DOT decisionmaker or Chief Administrative Law Judge may, upon his or her own initiative, or upon motion of any party, consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings that involve substantially the same parties or issues that are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

#### **§302.411 Motions to dismiss and for summary judgment.**

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within seven (7) days after service of the motion.

(b) Parties may petition the DOT decisionmaker to review any action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in §302.32.

#### **§302.412 Admissions as to facts and documents.**

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or administrative law judge and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant

documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters.

(c) Service of such request and answering statement shall be made as provided in §302.7. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

#### **§302.413 Evidence of previous violations.**

Evidence of previous violations by any person or of any provision of the Statute or any requirement thereunder found by the Department or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

#### **§302.414 Prehearing conference.**

A prehearing conference may be held in an enforcement proceeding whenever the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with §302.22.

#### **§302.415 Hearing.**

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge shall give the parties reasonable written notice of the time and place of the hearings. Except as may be modified by the provisions of this subpart, the procedures in §302.17 to §302.38 governing the conduct of oral evidentiary hearings will apply.

#### **§302.416 Appearances by persons not parties.**

With consent of the administrative law judge, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with the consent of the administrative law judge, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be asked witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

#### **§302.417 Settlement of proceedings.**

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision is issued by the DOT decisionmaker. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge

for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within ten (10) days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

**§302.418 Motions for immediate suspension of operating authority pendente lite.**

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by, the DOT decisionmaker. Proceedings on the motion shall be in accordance with §302.11. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

**§302.419 Modification or dissolution of enforcement actions.**

Whenever any party to a proceeding, in which an order of the Department has been issued pursuant to section 46101 of the Statute or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 46106 of the Statute, believes that changed conditions of fact or law or the public interest require that said order or judicial action be modified or set aside, in whole or in part, such party may file with the Department a motion requesting that the Department take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. The Department shall dispose of the motion by such procedure as it deems appropriate.

**§302.420 Saving Clause.**

Repeal, revision or amendment of any of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

**SUBPART E--RULES APPLICABLE TO PROCEEDINGS WITH RESPECT TO RATES, FARES AND CHARGES FOR FOREIGN AIR TRANSPORTATION**

**§302.501 Applicability.**

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation under Chapter 415 of the Statute. Except as modified by this subpart, the provisions of subpart A apply.

**§302.502 Institution of proceedings.**

A proceeding to determine the lawfulness of rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by the Department.

**§302.503 Contents and service of petition or complaint.**

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the air carrier against whose tariff provision the petition or complaint is filed.

(c) Answers to complaints, other than those filed under §302.506, shall be filed within seven (7) working days after the complaint is filed.

**§302.504 Dismissal of petition or complaint.**

If the Department is of the opinion that a petition or complaint does not state facts that warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

**§302.505 Order of investigation.**

The Department, on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the foreign air transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and may assign the proceeding for hearing before an administrative law judge. If a hearing is held, except as modified by this subpart, the provisions of §302.17 through §302.38 of this part shall apply.

**§302.506 Complaints requesting suspension of tariffs; answers to such complaints.**

(a) Formal complaints seeking suspension of tariffs pursuant to section 41509 of the Statute shall fully identify the tariff and include reference to:

- (1) The issued or posting date,
- (2) The effective date,
- (3) The name of the publishing carrier or agent,
- (4) The Department number, and
- (5) Specific items or particular provisions protested or complained against.

The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 41509 of the Statute, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by the complainant, and within the time limits herein provided, a complaint may be sent by facsimile, telegram, or electronic mail (when available) to the Department and to the carrier against whose tariff provision the complaint is made. Such complaint shall state the grounds relied upon, and must be confirmed in writing within three (3) business days and filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

#### **§302.507 Computing time for filing complaints.**

In computing the time for filing formal complaints pursuant to §302.506, with respect to tariffs that do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Department, in which event the period for filing shall be extended to the next successive day that is not a Saturday, Sunday, or holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by §302.8.

### **SUBPART F--RULES APPLICABLE TO PROCEEDINGS CONCERNING AIRPORT FEES**

#### **§302.601 Applicability.**

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers ("carriers"), pursuant to 49 U.S.C. 47129(a), for a determination of the reasonableness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination. An airport owner or operator is considered to have imposed a fee on a carrier when it has taken all steps necessary under its procedures to establish the fee, whether or not the fee is being collected or carriers are currently required to pay it.

(b) This subpart does not apply to—

(1) A fee imposed pursuant to a written agreement with a carrier using the facilities of an airport;

(2) A fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994, or

(3) Any other existing fee not in dispute as of August 23, 1994.

(c) Except as modified by this subpart, the provisions of subpart A of this part apply.

#### **§302.602 Complaint by a carrier; request for determination by an airport owner or operator.**

(a) Any carrier may file a complaint with the Secretary for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport. Any airport owner or operator may also request such a determination with respect to a fee it has imposed on one or more carriers. The complaint or request for determination shall conform to the requirements of this subpart and §§302.3 and 302.4 concerning the form and filing of documents.

(b) If a carrier has previously filed a complaint with respect to the same airport fee or fees, any complaint by another carrier and any airport request for determination shall be filed no later than seven (7) calendar days following the initial complaint. In addition, all complaints or requests for determination must be

filed on or before the sixtieth (60th) day after the carrier receives written notice of the imposition of the new fee or the imposition of the increase in the fee.

(c) To ensure an orderly disposition of the matter, all complaints and any request for determination filed with respect to the same airport fee or fees will be considered in a consolidated proceeding, as provided in §§ 302.606.

#### **§302.603 Contents of complaint or request for determination.**

(a) The complaint or request for determination shall set forth the entire grounds for requesting a determination of the reasonableness of the airport fee. The complaint or request shall include a copy of the airport owner or operator's written notice to the carrier of the imposition of the fee, a statement of position with a brief, and all supporting testimony and exhibits on which the filing party intends to rely. In lieu of submitting duplicative exhibits or testimony, the filing party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(b) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. The disk submission must be in one of the following formats, in the latest two versions, or in such other format as may be specified by notice in the Federal Register: Microsoft Word (or RTF), Word Perfect, Ami Pro, Microsoft Excel, Lotus 123, Quattro Pro, or ASCII tab-delineated files. Parties should submit three copies of each diskette to Department of Transportation Dockets: one copy for the docket, one copy for the Office of Hearings, and one copy for the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(c) When a carrier files a complaint, it must also certify:

(1) That it has served on the airport owner or operator and all other carriers serving the airport the complaint, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the complaint is filed. Such service shall be by hand, by electronic transmission, or by overnight express delivery. (Unless a carrier has informed the complaining carrier that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) That the carrier has previously attempted to resolve the dispute directly with the airport owner or operator;

(3) That when there is information on which the carrier intends to rely that is not included with the brief, exhibits, or testimony, the information has been omitted because the airport owner or operator has not made that information available to the carrier. The certification shall specify the date and form of the carrier's request for information from the airport owner or operator; and

(4) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

(d) When an airport owner or operator files a request for determination, it must also certify:

(1) That it has served on all carriers serving the airport the request, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the request is filed. Such service shall be in the same manner as provided in §302.603(c)(1).

(2) That the airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and

(3) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

**§302.604 Answers to a complaint or request for determination.**

(a)(1) When a carrier files a complaint under this subpart, the owner or operator of the airport and any other carrier serving the airport may file an answer to the complaint as provided in paragraphs (b) and (c) of this section.

(2) When the owner or operator of an airport files a request for determination of the reasonableness of a fee it has imposed, any carrier serving the airport may file an answer to the request.

(b) The answer to a complaint or request for determination shall set forth the answering party's entire response. When one or more additional complaints or a request for determination has been filed pursuant to §302.602(b) with respect to the same airport's fee or fees, the answer shall set forth the answering party's entire response to all complaints and any such request for determination. The answer shall include a statement of position with a brief and any supporting testimony and exhibits on which the answering party intends to rely. In lieu of submitting duplicative exhibits or testimony, the answering party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) Answers to a complaint shall be filed no later than fourteen (14) calendar days after the filing date of the first complaint with respect to the fee or fees in dispute at a particular airport. Answers to a request for determination shall be filed no later than fourteen (14) calendar days after the filing date of the request.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in §302.603(b).

(e) The answering party must also certify that:

(1) it has served the answer, brief, and all supporting testimony and exhibits by hand, by electronic transmission, or by overnight express delivery on the carrier filing the complaint or the airport owner or operator requesting the determination, and that those parties have received or will receive these documents no later than the date the answer is filed; and

(2) that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

**§302.605 Replies.**

(a) The carrier submitting a complaint may file a reply to any or all of the answers to the complaint. The airport owner or operator submitting a request for determination may file a reply to any or all of the answers to the request for determination.

(b) The reply shall be limited to new matters raised in the answers. It shall constitute the replying party's entire response to the answers. It shall be in the form of a reply brief and may include supporting testimony and exhibits responsive to new matters raised in the answers. In lieu of submitting duplicative exhibits or testimony, the replying party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) The reply shall be filed no later than two (2) calendar days after answers are filed.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in §302.603(b).

(e) The carrier or airport owner or operator submitting the reply must certify that it has served the reply and all supporting testimony and exhibits on the party or parties submitting the answer to which the reply is directed, and that those parties have received or will receive these documents no later than the date the reply is filed, and that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

**§302.606 Review of complaints or requests for determination.**

(a) Within thirty (30) days after a complaint or request for determination is filed under this subpart, the Secretary will determine whether the complaint or request meets the procedural requirements of this subpart and whether a significant dispute exists, and take appropriate action pursuant to paragraph (b), (c), or (d) of this section. When both a complaint and a request for determination have been filed with respect to the same airport fee or fees, the Secretary will issue a determination as to whether the complaint, the request, or both meet the procedural requirements of this subpart and whether a significant dispute exists within thirty (30) days after the complaint is filed.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint or request for hearing before an administrative law judge. The instituting order will--

(1) Establish the scope of the issues to be considered and the procedures to be employed;

(2) Indicate the parties to participate in the hearing;

(3) Consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute; and

(4) Include any special provisions for exchange or disclosure of information by the parties.

(c) If the Secretary determines that the complaint or request does not meet the procedural requirements of this subpart, the complaint or request for determination will be dismissed without prejudice to filing a new complaint. The order of the Secretary will set forth the terms and conditions under which a revised complaint or request may be filed.

(d) If the Secretary finds that no significant dispute exists--

(1) If the proceeding was instituted by a complaint, the Secretary will issue an order dismissing the complaint, which will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(2) If the proceeding was instituted by a request for determination, the Secretary will either issue a final order as provided in §302.610 or set forth the schedule for any additional procedures required to complete the proceeding.

**§302.607 Decision by administrative law judge.**

The administrative law judge shall issue a decision recommending a disposition of a complaint or request for determination within sixty (60) days after the date of the instituting order, unless a shorter period is specified by the Secretary.

**§302.608 Petitions for discretionary review.**

(a) Within five (5) calendar days after service of a decision by an administrative law judge, any party may file with the Secretary a petition for discretionary review of the administrative law judge's decision.

(b) Petitions for discretionary review shall comply with §302.32(a). The petitioner must also certify that it has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding and that those parties have received or will receive the petition no later than the date it is filed.

(c) Any party may file an answer in support of or in opposition to any petition for discretionary review. The answer shall be filed within four (4) calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in §302.32(b).

#### **§302.609 Completion of proceedings.**

(a) When a complaint or a request for determination with respect to an airport fee or fees has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint or request is filed.

(b) When both a complaint and a request for determination have been filed with respect to the same airport fee or fees and have not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

#### **§302.610 Final order.**

(a) When a complaint or request for determination stands submitted to the Secretary for final decision on the merits, he or she may dispose of the issues presented by entering an appropriate order, which will include a statement of the reasons for his or her findings and conclusions. Such an order shall be deemed a final order of the Secretary.

(b) The final order of the Secretary shall include, where necessary, directions regarding an appropriate refund or credit of the fee increase or newly established fee which is the subject of the complaint or request for determination.

(c) If the Secretary has not issued a final order within 120 days after the filing of a complaint by an air carrier or foreign air carrier, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

### **SUBPART G--RULES APPLICABLE TO MAIL RATE PROCEEDINGS AND MAIL CONTRACTS**

#### **§302.701 Applicability.**

(a) This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department for foreign air transportation and air transportation between points in Alaska, and certain contractual arrangements between the U.S. Postal Service and certificated air carriers for the carriage of mail in foreign air transportation entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772.

(b) Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than five (5) percent, based on weight, of the international mail transported under any such contract may consist of letter mail.

#### **FINAL MAIL RATE PROCEEDINGS**

#### **§302.702 Institution of proceedings.**

(a) Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the U.S. Postal Service, or upon the issuance of an order by the DOT decisionmaker.

(b) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rates, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(c) In any case where an air carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the DOT decisionmaker, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(d) All petitions, amended petitions, and documents relating thereto shall be served upon the U.S. Postal Service by sending a copy to the Assistant General Counsel, Transportation Division, Washington, DC 20260-1124, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the U.S. Postal Service shall consist of a statement in the document that the person filing it has served a copy as required by this section.

(e) Answers to petitions shall be filed within twenty (20) days after service of the petition.

#### **§302.703 Order to show cause or instituting a hearing.**

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT decisionmaker may issue an order directing the respondent to show cause why it should not adopt such findings and conclusions and such final rates as may be specified in the order to show cause, or may issue an order setting the matter for hearing before an administrative law judge.

#### **§302.704 Objections and answers to order to show cause.**

(a) Where an order to show cause is issued, any person having objections to the rates specified in such order shall file with the DOT decisionmaker an answer within forty-five (45) days after the date of service of such order or within such other period as the order may specify.

(b) An answer to an order to show cause shall contain specific objections, and shall set forth the findings and conclusions, the rates, and the supporting exhibits that would be substituted for the corresponding items in the findings and conclusions of the show cause order, if such objections were found valid.

(c) An answer filed by a person who is neither a party nor a person ultimately permitted to intervene in an oral evidentiary hearing if such proceeding is established shall be treated as a memorandum filed under §302.706.

#### **§302.705 Further procedures.**

(a) If no answer is filed within the designated time, or if a timely filed answer raises no material issue of fact, the DOT decisionmaker may, upon the basis of the record in the proceeding, enter a final order fixing the rate or rates.

(b) If an answer raising a material issue of fact is filed within the time designated in the Department's order, the DOT decisionmaker may then issue an order authorizing additional pleadings and/or establishing further procedural steps, including setting the matter for oral evidentiary hearing before an administrative law judge.

#### **§302.706 Hearing.**

(a) If a hearing is ordered under §302.705, the issues at such hearing shall be formulated in accordance with the instituting order, except that at a prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to make a full determination of a fair and reasonable rate.

(b) (1) The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the U.S. Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom the DOT decisionmaker or administrative law judge permits to intervene in accordance with §302.20.

(2) In addition to participation in hearings in accordance with §302.19, persons other than parties may, within the time fixed for filing an answer to an order to show cause as provided in §302.704, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

(c) All direct evidence shall be in writing and shall be filed in exhibit form within the times specified by the DOT decisionmaker or by the administrative law judge.

(d) Except as modified by this subpart, the provisions of §302.17 through §302.38 of this part shall apply.

#### PROVISION FOR TEMPORARY RATE

##### **§302.707 Procedure for fixing temporary mail rates.**

At any time during the pendency of a proceeding for the determination of final mail rates, the DOT decisionmaker, upon his or her own initiative, or on petition by the air carrier whose rates are in issue or by the U.S. Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

#### INFORMAL MAIL RATE CONFERENCE PROCEDURE

##### **§302.708 Invocation of procedure.**

(a) Conferences between DOT employees, representatives of air carriers, the U.S. Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

(b) At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conference shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

##### **§302.709 Scope of conferences.**

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers they have in the processing of rate cases not involving a rate conference. The employees' function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with

recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employees' analyses and recommendations.

##### **§302.710 Participants in conferences.**

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the U.S. Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deem his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

##### **§302.711 Conditions upon participation.**

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for ninety (90) days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust;

(2) Shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the DOT decisionmaker; and

(3) Shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. (The term "information", as used in this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference.)

(b) *Signed statement required.* Every representative of an air carrier actually present at any conference shall sign a statement that he or she has read this entire instruction and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed above. Every representative of the U.S. Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any air carrier that has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential, every participant, as defined in paragraph (e) of this section, shall file a verified compliance report with

Department of Transportation Dockets stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include:

(1) Any representative of any air carrier and any representative of the U.S. Postal Service actually present at the conference;

(2) The directors and the officers of any air carrier that had a representative at the conference;

(3) The members of any firm of attorneys or consultants that had a representative at the conference; and

(4) The members of the U.S. Postal Service staff who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.

#### **§302.712 Information to be requested from an air carrier.**

When an air carrier is requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment that will be required to perform the operations for a future period, full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the air carrier's experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the air carrier shall be certified by a responsible officer.

#### **§302.713 DOT analysis of data for submission of answers thereto.**

After a careful analysis of these data, the DOT employees will, in most cases, send the air carrier a statement of exceptions showing areas of differences. Where practicable, the air carrier may submit an answer to these exceptions. Conferences will then be scheduled to resolve the issues and facts in accordance with sound ratemaking principles.

#### **§302.714 Availability of data to the U.S. Postal Service.**

The representatives of the U.S. Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the air carrier, and a reasonable time shall be allowed to review the facts and issues and to make any presentation deemed necessary; *Provided*, That in cases other than those involving an issue as to the service mail rates payable by the U.S. Postal Service pursuant to section 41901 of the Statute, representatives of the U.S. Postal Service shall be furnished with copies of data under this provision only upon their written request.

#### **§302.715 Post-conference procedure.**

No briefs, argument, or any formal steps will be entertained by the DOT decisionmaker after the rate conferences. The form, content and time of the staff's presentation to the DOT decisionmaker are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The DOT decisionmaker will grant such requests whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall

not, however, impair the rights that any party might otherwise have under the Statute and this part.

#### **§302.716 Effect of conference agreements.**

No agreements or understandings reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that a rate conference was held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that, upon the filing of an answer by any party to the rate proceeding, all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with §302.22.

#### **§302.717 Waiver of participant conditions.**

After the termination of a mail rate conference hereunder, the air carrier whose rates were in issue may petition the DOT decisionmaker for a release from the obligations imposed upon it and all other persons by §302.711. The DOT decisionmaker will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the DOT decisionmaker will grant or deny the request without being required to assign reasons therefor.

#### **PROCESSING CONTRACTS FOR THE CARRIAGE OF MAIL IN FOREIGN AIR TRANSPORTATION**

#### **§302.718 Filing.**

Any air carrier that is a party to a contract to which this subpart is applicable shall file three (3) copies of the contract in the Office of Aviation Analysis, X-50, Department of Transportation, Washington, DC 20590, not later than ninety (90) days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in §302.720 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the secretary or other duly authorized officer of the filing air carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

#### **§302.719 Explanation and data supporting the contract.**

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent, estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

#### **§302.720 Service.**

A copy of each contract filed pursuant to §302.718, and a copy of all material and data filed pursuant to §302.719, shall be served upon each of the following persons:

(a) Each certificated and commuter (as defined in §298.2 of this chapter) air carrier, other than the contracting carrier, that is actually providing scheduled mail services between any pair of points between which mail is to be transported pursuant to the contract; and

(b) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, DC 20260-1124.

**§302.721 Complaints.**

Within fifteen (15) days of the filing of a contract, any interested person may file with the Office of Aviation Analysis, X-50, Department of Transportation, Washington, DC 20590, a complaint with respect to the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to §302.720.

**§302.722 Answers to complaints.**

Answers to the complaint may be filed within ten (10) days of the filing of the complaint, with service being made as provided in §302.720.

**§302.723 Further procedures.**

(a) In any case where a complaint is filed, the DOT decisionmaker shall issue an order dismissing the complaint, disapproving the contract, or taking such other action as may be appropriate. Any such order shall be issued not later than ten (10) days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the DOT decisionmaker may issue a letter of notification to all persons upon whom the contract was served indicating that the Department does not intend to disapprove the contract.

(c) Unless the DOT decisionmaker disapproves the contract not later than ten (10) days prior to its effective date, the contract automatically becomes effective.

**§302.724 Petitions for reconsideration.**

Except in the case of a Department determination to disapprove a contract, no petitions for reconsideration of any Department determination pursuant to this subpart shall be entertained.

## Appendix A -- Index to Rules of Practice

Subject	Rule
<b>ADMINISTRATIVE LAW JUDGES</b>	
Actions after hearings	§302.31(a)
Actions during prehearing conference	§302.22(b)
Arguments before	§302.29
Briefs	§302.30
Licensing cases	§302.215
Certification for decision	§302.31(b)
Definition	§302.2
Delegation of authority	§307.17(a)(3)
Exceptions	§307.17(a)(3)
Interlocutory matters	§307.17(a)(3)
Disqualification	§302.17(b)
Exceptions	§302.24(i)
Licensing cases	§302.217
Hearings before	§302.23
Initial decision ( <i>see</i> Initial Decision)	
Powers	§302.17(a)
Prehearing conference report	§302.22(c)
Recommended decision ( <i>see</i> Recommended Decision)	
Termination of authority	§307.17(a)(4)
<b>ADMISSIONS</b>	
Enforcement proceeding	§302.412
Limitation on use	§302.412(c)
<b>AIRPORT FEES</b>	
Administrative law judge decision	§302.607
Complaints by U.S. or foreign air carriers	§302.602(a)
Answers	§302.604
Additional complaints	302.602(b)
Contents	§302.603
Format of exhibits and briefs	§302.603(b)
Service	§302.603(c)(1)
Replies	§302.605
Consolidation of proceedings	§302.602(c)
Dismissal	§§302.606(c), (d)
Final order §302.610	
Timing	§302.609
Instituting order	§302.606(b)
Petitions for discretionary review	§302.608
Answers	§302.608(c)
Request for determination by airport owner/operator §302.602(a)	
Answers	§302.604
Contents	§302.603
Format of exhibits and briefs	§302.603(b)

Service	§§302.603(d)(1)
Replies	§302.605
Review procedures	§302.606
Significant dispute determination	§302.606(b)
<b>AMENDMENTS OF DOCUMENTS (<i>see</i> Documents)</b>	
<b>ANSWERS (<i>see also</i> Replies)</b>	
Airport fees	§302.604
Certificate applications	
Initial fitness	§302.204
International route awards	
Conforming applications	§302.212(d)
Motions to modify scope	§302.212(d)
New authority	§302.212(b)
Complaints	
Air mail contracts	§302.722
Airport fees	§302.604
Enforcement matters	§302.405
Suspension of tariffs	302.506
Consolidation of proceedings	§302.13(c)
Enforcement proceeding, notice instituting	§302.408
Exemption applications	§302.307
Foreign air carrier permit applications	§302.204
Generally	§302.6
Mail rate proceedings show cause orders	§302.704
Motions, generally	§302.11(c)
Motions to consolidate	§302.13(c)
Motions to dismiss and for summary judgment	§302.411
Motions for modification/dissolution	
of enforcement proceedings	§302.419
Petitions for discretionary review	§302.32(b)
Petitions for final mail rates	§302.702(e)
Petitions for intervention	§302.20(c)(3)
Petitions for reconsideration	§302.14
Requests for determination of airport fees	§302.607
<b>APPEALS</b>	
Administrative Law Judge's ruling	§302.11(h)
Enforcement complaints	§302.406(c)
<b>APPEARANCES</b>	
Generally	§302.21
Application for admission to practice unnecessary	§302.21(b)
Copy of transcript	§302.27(b)
Retention of counsel	§302.27(a)
Enforcement proceedings	§302.416
<b>APPLICATIONS</b>	

Admission to practice unnecessary	§302.21(b)
Suspension from practicing before DOT	§302.21(c)
Amendment	§302.5
Certificates for international route awards	§§302.201-206
Conforming applications	§302.212(c)
Certificates involving initial fitness	§§302.201-206
Consolidation	§302.13
Exemptions	§§302.302-304
Exemptions, emergency	§302.311
Foreign Air Carrier Permits	§§302.201-206
Licensing cases	§§302.201-206
<b>ARGUMENT</b>	
Before Administrative Law Judge	§302.29
Oral ( <i>see</i> Oral Arguments)	
ATTENDANCE FEES AND MILEAGE	§302.27(c)
<b>BRIEFS</b>	
Accompanying motions or answers	§302.11(d)
Failure to restate objections	§302.35(b)
Filing time	§302.35(a)
Formal specifications	§302.35(c)
Incorporation by reference	§302.35(c)(2)
Licensing cases	§§302.215, 218
To Administrative Law Judge	§302.30
Licensing cases	§302.215
To DOT decisionmaker	§302.35
Licensing cases	§302.218
<b>CERTIFICATE CASES FOR U.S. AIR CARRIERS</b>	
Application	
Answers to	§302.204(a)
Contents of	§302.202
Incomplete	§302.209
Replies to answers	§302.204(b)
Service of	§302.203
Supporting evidence	§302.202(a), 205
Verification	§302.206
Continuing Fitness	§302.211
Non-hearing procedures	§302.207
Generally	§§302.201-220
Initial Fitness	§302.211
International Route Awards	§302.212
Oral evidentiary hearing proceedings	§§302.214-220
Petition for	§302.208
<b>CERTIFICATION</b>	
Documents	§302.4(b)
Record	302.31(b)
<b>CHARGES</b> ( <i>see</i> Rates, Fares, and Charges; Airport Fees)	

CITATION OF RULES	§302.1(c)
CIVIL PENALTIES	§§302.407(d),(e)
COMPLAINANTS, JOINDER	§302.404(d)
<b>COMPLAINTS</b>	
Airport fees	§§302.602-603
Contracts for transportation of mail	§302.721
Enforcement proceedings	§§302.403-404
Joinder	§302.404(d)
Rates, fares, and charges	§§302.501-507
Suspension of tariffs	§302.506
COMPUTATION OF TIME ( <i>see also</i> Time)	§302.8
<b>CONSOLIDATION OF PROCEEDINGS</b>	
Airport fees	§302.602(c)
Answer to motion for	§302.13(c)
Enforcement proceedings	§302.410
Filing time	§302.13(b)
Initiation of	§302.13(a)
CONTINUING FITNESS CERTIFICATE CASES	§302.212
<b>CONTRACTS</b> ( <i>see</i> Mail Contracts)	
<b>DECISIONS</b>	
Final	§§302.38, 220
Initial ( <i>see</i> Administrative Law Judges)	
Recommended ( <i>see</i> Administrative Law Judges)	
Tentative	§302.33
Exceptions to	§302.34
DEFINITIONS	§§302.2, 402
DELEGATION OF AUTHORITY	§§302.17(a),18(a)
<b>DEPOSITIONS</b>	
Application by party for	§302.26(b)
Criteria for order to issue	§302.26(a)
Evidential status	§302.26(h)
Objections to questions or evidence	§302.26(d)
Specifications	§302.26(g)
Subscription by witness	§302.26(e)
Written interrogatories	§302.26(f)
<b>DISCRETIONARY REVIEW</b>	
Initial and Recommended decisions	§302.32
Answers in opposition or support	§302.32(b)
Formal requirements	§§302.32(a)(3),(4)
Grounds for	§302.32(a)(2)
Orders declining review	§302.32(c)
Oral arguments	§302.32(a)(5)
Petitions for	§302.32(a)(1)
Review proceedings	§302.32(d)
DISSOLUTION OF ENFORCEMENT ACTION	§302.419
<b>DOCUMENTS</b>	

Amendments	302.5
Leave of Department	§302.5(a)
Timing of	§302.5(b)
Answers ( <i>see</i> Answers)	
Briefs ( <i>see</i> Briefs)	
Dismissal	§302.3(d)
Electronic filing	§302.3(c)
Exhibits	§302.24(c)
Filing	§302.3
Address	§302.3(a)
Date	§302.3(a)
Improper filing	§302.3(d)
Formal specifications	§302.3(b)
General requirements	§302.4
Contents	§302.4(a)(2)
Designation of person to receive service	§302.4(a)
Subscription	§302.4(b)
Memoranda of opposition or support	§302.706(b)(2)
Number of copies	§302.3(c)
Objections to public disclosure	§302.12
Official Notice of facts	§302.24(g)
Partial relevance of	§302.24(e)
Presented at oral argument	§302.36(b)
Receipt after hearing	§302.24(h)
Responsive	§302.6
Retention	§302.3(f)
Service ( <i>see</i> Service)	
Table of contents/Index	§302.4(a)(3)
Unauthorized	§302.6(c)
<b>DOT DECISIONMAKER</b>	
Briefs to	§302.35
Licensing cases	§302.218
Certification of record to	§302.31(b)
Definition	§§302.2, 18
Final decision	§302.38
Licensing cases	§302.220
Oral argument	§302.36
Licensing cases	§302.219
Petitions for reconsideration	§302.14
Review of Administrative Law Judge decision	§302.32
Tentative decision	§302.33
Exceptions	§302.34
<b>ENFORCEMENT PROCEEDINGS</b>	
Admissions as to facts and documents	§302.412
Complaints	
Formal	§302.404

Informal	§302.403
Insufficiency of	§302.404(c)
Consolidation of proceedings	§302.410
Evidence of previous violations	§302.413
Generally	§§302.401-420
Hearings	§302.415
Modification or dissolution of enforcement action	§302.419
Motions to dismiss	§302.411
Motions for summary judgment	§302.402
Settlement proceedings	§302.417
<b>EVIDENCE</b>	
Exhibits	§§302.24(c), (d)
Generally	§302.24(a)
Objections to	§302.24(b)
Offers of proof	§302.24(j)
Official notice of facts in certain documents	§302.24(g)
Partial relevance of	§302.24(e)
Previous violations	§302.413
Records in other proceedings	§302.24(f)
<b>EXAMINERS (<i>see</i> Administrative Law Judges)</b>	
<b>EXCEPTIONS</b>	
Administrative Law Judge's rulings	§302.24(i)
Initial decisions	§302.31(c)
Licensing cases	§302.217
Recommended decisions	§302.31(c)
Request for oral argument	§302.36
Tentative decisions	§302.34
Waiver	§302.37
<b>EXEMPTION PROCEEDINGS</b>	
Application	
Answers to	§302.307
Contents of	§302.303
Filing of	§302.302
Incomplete	§302.306
Posting of	§302.305
Service of	§302.304
Reply to answer	§302.308
Supporting evidence	§302.302(c)
DOT's initiative	§302.310
Emergencies	§302.311
Cabotage	§302.303(d)
Hearing request	§302.309
<b>EXHIBITS (<i>see also</i> Evidence)</b>	
Generally	§§302.24(c), (d)
<b>FARES (<i>see</i> Rates, Fares, and Charges)</b>	
<b>FEES (<i>see</i> Airport Fees)</b>	

FINAL MAIL RATE PROCEEDINGS ( <i>see</i> Mail Rate Proceedings)	
FINAL ORDERS ( <i>see</i> Orders)	
FITNESS CASES ( <i>see</i> Certificate Cases)	
FOREIGN AIR CARRIER PERMIT CASES	
Application	
Answers to	§302.204(a)
Contents of	§302.202
Incomplete	§302.209
Replies to answers	§302.204(b)
Service of	§302.203
Supporting evidence	§§302.202(a), 205
Verification	§302.206
Non-hearing procedures	§302.207
Generally	§§302.201-220
Oral evidentiary hearing proceedings	§§302.214-220
Petition for	§302.208
HEARINGS	
Airport fee dispute proceedings	302.606(b)
Argument before Administrative Law Judge	§302.29
Change in rates, fares, or charges	§302.706
Consolidated ( <i>see</i> Consolidation of Proceedings)	
Documents of partial relevance	§302.24(e)
Enforcement proceedings	§302.415
Evidence ( <i>see</i> Evidence)	
Expedition of	§302.11(e)
Generally	§302.23
Intervention	§302.20
Licensing cases	§302.214
Notice	§302.23
Offers of proof	§302.24(j)
Official notice of facts in certain documents	§302.24(g)
Participation by non parties	§302.19
Receipt of documents after hearing	§302.24(h)
Records in other proceedings	§302.24(f)
Request for, on application for exemption	§302.309
Shortened procedure	§302.15
Transcripts§302.28	
INITIAL DECISION	
Answer in support or opposition	§§302.32(b)
Contents	§302.31(c)
Effect of	§302.31(d)
Licensing cases	§302.216
Exceptions to	§302.217
Oral arguments	§302.32(a)(5)
Orders declining review	§302.32(c)
Petitions for discretionary review	§302.32

Service	§302.31(c)
Scope	§302.31(a)(1)
INITIAL FITNESS CERTIFICATE CASES ( <i>see</i> Certificate Cases)	
INSTITUTING ORDERS ( <i>see</i> Orders)	
INTERROGATORIES ( <i>see</i> Depositions)	
INTERVENTION	
Generally	§302.20
JOINDER OF COMPLAINTS OR COMPLAINANTS	§302.404(d)
JOINT PLEADINGS	
Enforcement cases	§302.404(d)
Licensing cases	§302.204(c)
LAW JUDGE ( <i>see</i> Administrative Law Judges)	
LICENSING CASES ( <i>see</i> Certificate Cases; Foreign Air Carrier Permit Cases)	
MAIL CONTRACTS	
Complaint against contract	§§302.721-723
Data supporting contract	§302.719
Explanation of contract	§302.719
Filing of contract	§302.718
Petition for reconsideration	§302.724
Service of contract	§302.720
MAIL RATE CONFERENCES	
Availability of data to Postal Service	§302.714
Conditions upon participation	§302.711
Compliance report	§302.711(d)
Non-disclosure of information	§302.711(a)
Signed statement required	§302.711(b)
DOT analysis of data for submission of answers	§302.713
Effect of conference agreements	§§302.716
Information to be requested from carrier	§302.712
Participants in conferences	§302.710
Post conference procedure	§302.715
Scope of conferences	§302.709
Time of commencing and terminating conference	§302.708(b)
Waiver of participant conditions	§302.717
MAIL RATE PROCEEDINGS	
Evidence	§302.706(c)
Further procedures	§302.705
Hearing	§§302.706
Institution of proceedings	§302.702
Objections and answers to show cause order	§302.704
Order to show cause	§302.703
Parties and persons other than parties	§§302.706(b)
MILEAGE FEES	§§302.27(c)
MODIFICATION OF ENFORCEMENT ACTION	§302.419
MOTIONS ( <i>see also</i> Petitions)	
Answers to	§302.11(c)

Appeals from rulings of Administrative Law Judges	§302.11(h)
Briefs	§302.11(d)
Consolidation of proceedings	§302.13
Enforcement cases	§302.410
Continuances and extension of time	§302.9
Disposition of	§302.11(g)
Effect of pendency	§302.11(f)
Expedition of case	§302.11(e)
For suspension of operating authority pendente lite	§302.418
For modification or dissolution of orders	§302.419
Form and contents	§302.11(b)
Generally	§302.11(a)
Oral arguments	§302.11(d)
Substitution of parties	§302.10(b)
To correct transcripts	§302.28(f)
To dismiss and for summary judgment	§302.411
To dismiss formal complaint	§302.405(c)
To file unauthorized documents	§302.6(c)
To modify scope in Licensing cases	§302.212(b)
To quash or modify subpoena	§302.25(f)
To whom motions addressed	§302.11(a)
To withhold information from public disclosure	§§302.12(d), (e)
NON-HEARING PROCEDURES	§302.15
Licensing cases	§302.207
OBJECTIONS ( <i>see also</i> Answers)	
To Public Disclosure of Information	§302.12
OFFERS OF PROOF	§302.24(j)
OFFICIAL NOTICE	§302.24(g)
ORAL ARGUMENTS	
Before DOT decisionmakers	§302.36
Request for leave	§302.36(a)
Rules on documentary evidence	§302.36(b)
Before Administrative Law Judges	§302.29
Discretionary review	§302.32(a)(5)
Licensing cases	§302.219
Waivers	§302.37
ORAL EVIDENTIARY HEARINGS ( <i>see</i> Hearings)	
ORDERS	
Declining review of initial decisions	§302.32(c)
Dismissal	
Airport fee dispute proceedings	§§302.606(c), (d)
Enforcement complaints	§302.406
Licensing cases	§302.210(a)(3)
Establishing further procedures (Licensing cases)	§302.210
Final	§§302.38
Airport fee dispute proceedings	§302.610

Licensing cases	§302.210
Mail contracts	§302.723(a)
Mail rate proceedings	§302.705
Instituting oral evidentiary hearing	
Airport fee dispute proceedings	§302.606(b)
Licensing cases	§302.210(a)(4)
Mail rate proceedings	§§302.703, 705(b)
Instituting investigation of rates, fares, charges	§302.505
Show cause	
Licensing cases	§§302.210(a)(1)
Mail rate proceedings	§302.703
PARTIES	
Appearances of	§§302.21(a)
Defined	§302.2, 10(a)
Enforcement proceedings	§302.402
Licensing cases	§302.210(a)(4)
Mail rate proceedings	§302.706(b)
Participation by Air Carrier Associations	§302.10(c)
Persons other than parties	§302.19
Substitution of	§302.10(b)
PETITIONS	
Determination of rates, fares, or charges	§302.502-503
Discretionary review ( <i>see</i> Discretionary Review)	
Filing Time	§302.14(a)
Institution of mail rate proceedings	§302.302
Intervention	§302.20
Orders subject to reconsideration	§302.14(a)
Repetitive	§302.14(c)
Reconsideration	§302.14
Rulemaking	§§302.16
PREHEARING CONFERENCE	§302.22
Actions during	§302.22(b)
Enforcement proceeding	§302.414
Purpose	§§302.22(a)
Report of	§302.22(c)
Scope	§§302.22(a)
PROCEEDINGS	
Airport fee dispute proceedings	§§302.601-610
Consolidation of ( <i>see</i> Consolidation)	
Contemporaneous consideration ( <i>see</i> Consolidation)	
Enforcement	§302.401-420
Exemption	§302.301-311
Licensing cases	§302.201-220
Mail rate	§302.701-717
Rates, fares, and charges	§302.501-507
PUBLIC DISCLOSURE OF INFORMATION	

Documents	§302.12(b)
Generally	§302.12(a)
Objection to by government	§302.12(f)
Oral testimony	§302.12(c)
RATES, FARES, AND CHARGES -- PROCEEDINGS	
<i>(see also</i> Mail Rate Proceedings; Airport Fees)	
Institution of	§302.502
Order of investigation	§302.505
Petition	§302.503
Contents	§302.503(a)
Dismissed	§302.504
Service	§302.503(b)
Suspension of tariffs	§302.506
Answers	§302.506(e)
Complaints	§302.506
Time for filing complaint	§302.507
RECOMMENDED DECISIONS <i>(see</i> Decisions)	
Answer in support or opposition	§302.32(b)
Contents	§302.31(c)
Effect of	§302.31(d)
Licensing cases	§302.216
Exceptions to	§302.217
Oral arguments	§302.32(a)(5)
Orders declining review	§302.32(c)
Petitions for discretionary review	§302.32
Service	§302.31(c)
Scope	§302.31(a)(2)
RECONSIDERATION, REHEARING, REARGUMENT	
<i>(see</i> Petitions for Reconsideration)	
RECORD, CERTIFICATION	§302.31(b)
REPLIES	
Airport fee dispute proceedings	§302.605
Exemption cases	§302.308
Generally	§302.6(b)
Licensing cases	§302.204(b)
Motions	§302.11(c)
Enforcement proceedings	§302.408
RESPONSIVE DOCUMENTS <i>(see</i> Answers; Replies)	
REVIEW <i>(see</i> Discretionary Review)	
ROUTE PROCEEDINGS <i>(see also</i> Certificate Cases)	
International route awards	§§302.201-220
RULEMAKING PETITIONS	
§302.16	
SERVICE	
Airport fee dispute proceedings	§§302.603(c)(1), (d)(1)
By the Department	§302.7(a)(1)
Date of	§302.7(f)

Enforcement complaints	§302.404(e)
Exemption cases	§302.304
Generally	§302.7
Licensing cases	§302.203
Mail rate petitions	§302.702(d)
Persons eligible for service	§302.7(c), (g), (h)
Procedures	§302.7(b)
Proof of	§302.7(e)
Rates, fares, and charges complaints	§302.503(b)
Where to be made	§302.7(d)
SETTLEMENT OFFERS	
Enforcement proceedings	§302.417
Public disclosure	§302.417(d)
SHORTENED PROCEDURE	
§302.15	
SHOW CAUSE ORDERS <i>(see</i> Orders)	
SUBPOENAS	§302.25
SUSPENSION OF PRACTICE BEFORE DOT	§302.25(f)
TARIFFS	
Complaints requesting suspension	§302.506
TEMPORARY RATE PROCEEDINGS	
§302.707	
TENTATIVE DECISIONS <i>(see</i> Decisions)	
TESTIMONY <i>(see</i> Witnesses)	
TIME	
Computation of	§302.8
Continuances of	§302.9
Extensions of	§302.9
Licensing cases	§302.209
TRANSCRIPTS OF HEARINGS	
§302.28	
U.S. AIR CARRIER CERTIFICATION <i>(see</i> Certificate Cases)	
VERIFICATION	
Licensing cases	§302.206
WAIVERS OF PROCEDURAL STEPS	
§302.37	
WITNESSES	
Attendance fees and mileage	§302.27(c)
Cross-examination by nonparties	§302.19
Depositions	§302.26
Objections to public disclosure of testimony	§302.12(c)
Represented by counsel	§302.27(a)
Subpoenas	§302.25
VIOLATIONS -- EVIDENTIAL STATUS IN ENFORCEMENT	
PROCEEDINGS	§302.413

**AVIATION DISASTER FAMILY ASSISTANCE ACT OF 1996**  
**[Excerpt from Federal Aviation Reauthorization Act of 1996**  
**(P.L. 104-265), October 6, 1996]**

**TITLE VII--FAMILY ASSISTANCE**

**SEC. 701. SHORT TITLE.**

This title may be cited as the "Aviation Disaster Family Assistance Act of 1996."

**SEC. 702. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.**

(a) AUTHORITY TO PROVIDE ASSISTANCE-

(1) IN GENERAL- Subchapter III of chapter 11 is amended by adding at the end the following:

Sec. 1136. Assistance to families of passengers involved in aircraft accidents

(a) IN GENERAL- As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall--

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) RESPONSIBILITIES OF THE BOARD- The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION- The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5) To arrange a suitable memorial service, in consultation with the families.

(d) PASSENGER LISTS-

(1) REQUESTS FOR PASSENGER LISTS-

(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES- It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) REQUESTS BY DESIGNATED ORGANIZATION- The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) USE OF INFORMATION- The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) CONTINUING RESPONSIBILITIES OF THE BOARD- In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident--

(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) USE OF AIR CARRIER RESOURCES- To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

(g) PROHIBITED ACTIONS-

(1) ACTIONS TO IMPEDE THE BOARD- No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) UNSOLICITED COMMUNICATIONS- In the event of an accident involving an air carrier providing interstate or foreign air transportation, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident.

(h) DEFINITIONS- In this section, the following definitions apply:

(1) AIRCRAFT ACCIDENT- The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.

(2) PASSENGER- The term “passenger” includes an employee of an air carrier aboard an aircraft.

(2) *CONFORMING AMENDMENT- The table of sections for such chapter is amended by inserting after the item relating to section 1135 the following:*

“1136. Assistance to families of passengers involved in aircraft accidents.”

(b) *PENALTIES- Section 1155(a)(1) of such title is amended-- (1) by striking “or 1134(b) or (f)(1)” and inserting “section 1134(b), section 1134(f)(1), or section 1136(g)”;* and (2) by striking “either of” and inserting “any of”.

### **SEC. 703. AIR CARRIER PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.**

(a) *IN GENERAL- Chapter 411 is amended by adding at the end the following:*

Sec. 41113. Plans to address needs of families of passengers involved in aircraft accidents.

(a) **SUBMISSION OF PLANS-** Not later than 6 months after the date of the enactment of this section, each air carrier holding a certificate of public convenience and necessity under section 41102 of this title shall submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life.

(b) **CONTENTS OF PLANS-** A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:

(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.

(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

(4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the air carrier.

(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to

the family unless the possession is needed for the accident investigation or any criminal investigation.

(7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months.

(8) An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.

(9) An assurance that the treatment of the families of nonrevenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.

(10) An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

(11) An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.

(12) An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) An assurance that the air carrier will commit sufficient resources to carry out the plan.

(c) **CERTIFICATE REQUIREMENT-** After the date that is 6 months after the date of the enactment of this section, the Secretary may not approve an application for a certificate of public convenience and necessity under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).

(d) **LIMITATION ON LIABILITY-** An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.

(e) **AIRCRAFT ACCIDENT AND PASSENGER DEFINED-** In this section, the terms “aircraft accident” and “passenger” have the meanings such terms have in section 1136 of this title.

(b) *CONFORMING AMENDMENT- The table of sections for such chapter is amended by adding at the end the following:*

“41113. Plans to address needs of families of passengers involved in aircraft accidents.”

### **SEC. 704. ESTABLISHMENT OF TASK FORCE.**

(a) **ESTABLISHMENT-** The Secretary of Transportation, in cooperation with the National Transportation Safety Board, the Federal Emergency Management Agency, the American Red Cross, air carriers, and families which have been involved in aircraft accidents shall establish a task force consisting of representatives of such entities and families, representatives of air carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) **GUIDELINES AND RECOMMENDATIONS-** The task force established pursuant to subsection (a) shall develop--

(1) guidelines to assist air carriers in responding to aircraft accidents;

(2) recommendations on methods to ensure that attorneys and representatives of media organizations do not intrude on the privacy of families of passengers involved in an aircraft accident;

(3) recommendations on methods to ensure that the families of passengers involved in an aircraft accident who are not citizens of the United States receive appropriate assistance;

(4) recommendations on methods to ensure that State mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aircraft accident or other related sites;

(5) recommendations on the extent to which military experts and facilities can be used to aid in the identification of the remains of passengers involved in an aircraft accident; and

(6) recommendations on methods to improve the timeliness of the notification provided by air carriers to the families of passengers involved in an aircraft accident, including--

(A) an analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

(B) an analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A);

(C) an analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and

(D) an analysis of the implications for personal privacy that would result if air carriers were required to take the steps described in subparagraph (A).

*(c) REPORT- Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b).*

#### **SEC. 705. LIMITATION ON STATUTORY CONSTRUCTION.**

Nothing in this title or any amendment made by this title may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.



**PART IV**

**SAMPLE FORMS**



**AFFIDAVIT OF CITIZENSHIP**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ *[name]* \_\_\_\_\_ being first duly sworn, deposes and says:

1. That he/she is duly elected, qualified, and serving as \_\_\_\_\_ *[officer]* \_\_\_\_\_ of \_\_\_\_\_ *[applicant's name]* \_\_\_\_\_ and that he/she is authorized to and does make this affidavit for it.

2. That \_\_\_\_\_ *[applicant's name]* \_\_\_\_\_ is a citizen of the United States within the meaning of 49 U.S.C. 40102(a)(15).

\_\_\_\_\_ *[signature]* \_\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_ *[signature of Notary Public]* \_\_\_\_\_.

(SEAL)

**AFFIDAVIT OF SAFETY COMPLIANCE**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ *[name]* being first duly sworn, deposes and says:

1. That he/she is duly elected, qualified, and serving as \_\_\_\_\_ *[officer]* .  
of \_\_\_\_\_ *[applicant's name]* and that he/she is authorized to and  
does make this affidavit for it.

2. That all aircraft owned and leased by \_\_\_\_\_ *[applicant's name]* .  
have been certified by the Federal Aviation Administration and currently comply with  
all applicable Federal Aviation Administration safety standards under Parts [121] [135],  
as well as the noise standards of Part 36, of the Federal Aviation Regulations.

\_\_\_\_\_ *[signature]* .

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_ *[signature of Notary Public]* .

(SEAL)

**INSTRUCTIONS FOR COMPLETING  
CERTIFICATE OF INSURANCE -- OST FORM 6410**

OST Form 6410 is to be completed by an officer or authorized representative of an insurance company or broker and an original, signed copy is to be filed with:

Department of Transportation  
Air Carrier Fitness Division, X-56  
400 Seventh Street, SW  
Washington, DC 20590

**Line 1.** Enter name and address of the insurance company.

**Lines 2-3.** Enter name (including “doing business as” (“d/b/a”) names and address of air carrier insured by the policy. If an insurance policy is issued to a person or company other than the air carrier, the certificate of insurance must state that the air carrier is also covered under that policy. Include the FAA Air Carrier Certificate number (if known).

**Line 4.** Enter the effective date of the policy. Note that the policy must remain in effect and cannot be cancelled on less than ten days’ written notice to the Department.

**Section 1.** State whether the insurance company is licensed to issue aircraft insurance policies in the United States or by a foreign government or is an approved surplus line insurer. Note that more than one block may be checked.

**Section 2, Part A. U.S. Air Taxi Operators with Part 298 Authority Only.** This part should be completed only for **Air Taxi Operators** with authority under Part 298 to operate aircraft having 60 seats or less or a payload capacity of 18,000 pounds or less, not in scheduled passenger service. Indicate whether the insured air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number and amount of coverage in the specified places. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

**Section 2, Part B. U.S. Commuter and Certificated Air Carriers Operating Small Aircraft.** This part should be completed only for commuter or certificated air carriers operating aircraft that have 60 seats or less or a payload capacity of 18,000 pounds or less. Indicate whether the insured air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number and amount of coverage in the specified places. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

**Section 2, Part C. U.S. Certificated Air Carriers Operating Large Aircraft.** This part should be completed only for certificated air carriers operating aircraft that have more than 60 seats or a payload capacity of more than 18,000 pounds. Indicate whether the insured air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number and amount of coverage in the specified places. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

**Section 3.** Indicate whether the policy covers (1) all aircraft operated by the insured air carrier, or (2) general groups or types of aircraft, or (3) specific aircraft as shown by FAA registration number (use an additional page if necessary).

**Section 4.** Indicate name, address, contact person, and telephone numbers (office/fax) of insurer and, if applicable, of the broker. This form must be signed by an officer or authorized representative of the insurance company or broker.

**Any questions concerning the completion of this form?** Please contact the Air Carrier Fitness Division, 202-366-9721.

**INTERIM AGREEMENT OF AIR CARRIERS  
("MONTREAL AGREEMENT")  
EXPLANATORY STATEMENT**

In 1934, the United States became a party to an international agreement, generally known as the Warsaw Convention, which was the first agreement between countries to provide for any uniform body of law with respect to the rights and responsibilities of passengers and air carriers in international transportation. Among other things, the Warsaw Convention set a limit on the liability an air carrier could incur with respect to bodily injury or death of any passenger carried in international air transportation,<sup>1</sup> which, in today's terms, is approximately \$10,000.

In 1966, the United States indicated its intent to denounce the Warsaw Convention because of its dissatisfaction with the Convention's \$10,000 limit on an air carrier's liability to passengers. The U.S. withdrew its denunciation when all carriers serving this country, both U.S. and foreign, entered into the "Montreal Agreement." That Agreement increases the Warsaw Convention liability limit to \$75,000 per passenger.<sup>2</sup> The Agreement also provides that a carrier is strictly liable for a passenger's bodily injury or death up to the liability limit even if the carrier can prove that it was not negligent in causing the accident.

The Department requires all air carriers to become signatories to the Montreal Agreement to ensure that passengers are covered by the higher limits of liability provided by that Agreement. This is accomplished by completing and filing OST Form 4523.

**INSTRUCTIONS FOR COMPLETING OST FORM 4523**

1. The form must be signed by an officer of the carrier.
2. The signing person's title and the name and address of the air carrier should be listed in the space provided.
3. An original and three copies of the form should be filed with the Department of Transportation Dockets, Rm. PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590. If filed at the time of application for air carrier authority, the form should be filed separately, *i.e.*, not assembled as part of or an exhibit to the application.

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<sup>1</sup> International air transportation not only includes transportation between a U.S. point and a foreign point, but also service wholly within the U.S. if the passenger holds a ticket providing an interline connection to a foreign point.

<sup>2</sup> This limit on liability should not be confused with the Department's mandatory liability insurance requirements for air carriers, which are required for all operations, both domestic and international, and which are intended to provide a source of funds in the event of an aircraft accident.



**AGREEMENT**

The undersigned carriers (hereinafter referred to as "the Carriers") hereby agree as follows:

1. Each of the Carriers shall, effective May 16, 1966, include the following in its conditions of carriage, including tariffs embodying conditions of carriage filed by it with any government:

"The Carrier shall avail itself of the limitation of liability provided in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw October 12th, 1929, or provided in the said Convention as amended by the Protocol signed at The Hague September 28th, 1955. However, in accordance with Article 22(1) of said Convention, or said Convention as amended by said Protocol, the Carrier agrees that, as to all international transportation by the Carrier as defined in the said Convention or said Convention as amended by said Protocol, which, according to the contract of Carriage, includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place

- (1) The limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of US \$75,000 inclusive of legal fees and costs, except that, in case of a claim brought in a State where provision is made for separate award of legal fees and costs, the limit shall be the sum of US \$58,000 exclusive of legal fees and costs.
- (2) The Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20(1) of said Convention or said Convention as amended by said Protocol.

Nothing herein shall be deemed to affect the rights and liabilities of the Carrier with regard to any claims brought by, on behalf of, or in respect of any person who has willfully caused damage which resulted in death, wounding, or other bodily injury of a passenger."

2. Each Carrier shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention, or the Convention as amended by the Hague Protocol, and by the special contract described in paragraph 1, the following notice, which shall be printed in type at least as large as 10 point modern type and in ink contrasting with the stock on (i) each ticket; (ii) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (iii) on the ticket envelope:

"ADVICE TO INTERNATIONAL PASSENGER ON LIMITATION OF LIABILITY

Passengers on a journey involving an ultimate destination or a stop in a country other than the country of origin are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to the entire journey, including any portion entirely within the country of origin or destination. For such passengers on a journey to, from, or with an agreed stopping place in the United States of America, the Convention and special contracts of carriage embodied in applicable tariffs provide that the liability of [certain ]\* [(name of carrier) and certain other] carriers parties to such special contracts for death of or personal injury to passengers is limited in most cases to proven damages not to exceed US \$75,000 per passenger, and that this liability up to such limit shall not depend on negligence on the part of the carrier. For such passengers traveling by a carrier not a party to such special contracts or on a journey not to, from, or having an agreed stopping place in the United States of America, liability of the carrier for death or personal injury to passengers is limited in most cases to approximately US \$10,000 or US \$20,000.

The names of Carriers parties to such special contracts are available at all ticket offices of such carriers and may be examined on request.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention or such special contracts of carriage. For further information please consult your airline or insurance company representative."

3. [The Agreement was filed with the Civil Aeronautics Board of the United States. The Board approved it by Order E-23680, adopted May 13, 1966. The Agreement (Agreement 18900) became effective May 16, 1966. On January 1, 1985, this Agreement became the responsibility of the Department of Transportation (DOT) by operation of law.]

4. This Agreement may be signed in any number of counterparts, all of which shall constitute one Agreement. Any Carrier may become a party to this Agreement by signing a counterpart hereof and depositing it with DOT.

5. Any Carrier party hereto may withdraw from this Agreement by giving twelve (12) months' written notice of withdrawal to DOT and the other Carriers parties to the Agreement.

\* Either alternative may be used.

\_\_\_\_\_ [signature and title]  
 \_\_\_\_\_ [name of carrier]  
 \_\_\_\_\_ [address of carrier]  
 \_\_\_\_\_