

# Foreign Air Carrier Information Packet

How to assemble and file applications for DOT  
authority to enable a foreign air carrier to conduct  
commercial operations to and from the United States



**U.S. Department of Transportation**  
Office of International Aviation  
Foreign Air Carrier Licensing Division

September, 2000

## **Introduction**

This packet contains information on the steps a foreign air carrier must follow in order to obtain economic authority from the Department of Transportation to conduct commercial operations in foreign air transportation to and from the United States.<sup>1</sup> It contains guidance on how to prepare and file the necessary applications, copies of relevant Department regulations and forms, and information on requirements of the Department and other Federal agencies that will affect a foreign carrier in seeking to commence U.S. operations.

Please note that while this packet gives general information on how to file for Department economic authority, it cannot cover all possible situations which may arise. We therefore strongly urge prospective foreign carrier applicants to consider carefully the advisability of seeking professional legal assistance in preparing their applications.

## **Who Must File**

Under Title 49 of the United States Code (the Statute),<sup>2</sup> a foreign citizen or company which desires to provide foreign air transportation service as a foreign air carrier must first obtain economic authority from the Department. A “foreign air carrier” is defined by 49 U.S.C. 40102(21) as “a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.” “Foreign air transportation” is defined by 49 U.S.C. 40102(23) 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.”

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<sup>1</sup> This packet should not be used by Canadian air taxi operators (which are governed by 14 CFR Part 294 of our regulations), or by foreign air freight forwarders (governed by 14 CFR Part 297). Copies of Parts 294 and 297 may be obtained from the Regulatory Analysis Division, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. These and other CFR Titles mentioned in this information packet are available online at <http://www.access.gpo.gov/nara/cfr/index.html>.

<sup>2</sup> P.L. 103-272, July 5, 1994, revised and recodified the Federal Aviation Act within Subtitle VII of Title 49, United States Code (Transportation). Copies of the statute may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. It is also available online at <http://www.access.gpo.gov/congress/cong013.html>.

## **Forms of Economic Authority**

The two forms of economic authority granted by the Department to foreign air carriers are: (1) a foreign air carrier permit, under 49 U.S.C. 41301, and (2) an exemption from the permit requirement under 49 U.S.C. 40109. The foreign air carrier permit is the more permanent license, typically having a duration coextensive with the terms of the applicable bilateral aviation agreement between the United States and the applicant's homeland, or, if there is no agreement, a duration of five years.

Because under our procedural rules the processing time for foreign air carrier permit request can be lengthy, most foreign air carrier applicants also request, at the time they file their applications for permit authority, an exemption from the permit requirement. Such an exemption allows them to commence operations while the Department is processing the permit request.<sup>3</sup> The Department typically grants exemptions for a period of one to two years, and foreign carriers may request renewal of exemption authority. Under 14 CFR Part 377, so long as the exemption for which renewal is sought was granted for a period of at least 180 days, a timely application for renewal will maintain the authority in effect beyond the stated expiration date until such time as the Department completes its processing of the renewal application.

## **Content of Applications**

14 CFR Part 211 of the Department's rules describes the filing and evidence requirements for prospective foreign air carriers.<sup>4</sup> The information is intended to give the Department sufficient evidence to determine that the applicant is substantially owned and effectively controlled by citizens of its claimed homeland; that it is operationally and financially fit to conduct the proposed services; and that either (1) the operation of those services is encompassed by the relevant bilateral aviation agreement between the United States and the applicant's homeland, or (2) there is sufficient comity and reciprocity with the applicant's homeland to support a finding that grant of the request would be in the public interest.

In brief, the application by a new foreign air carrier must contain the following information and materials (more specific details are contained in §211.20):

- a description of the applicant along with a brief operating history;

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<sup>3</sup> It is important to note that while the exemption process typically allows the Department to act more quickly than the permit process, the public interest standards for approval are the same.

<sup>4</sup> A copy of Part 211 (and of other regulations relevant to filing for Department authority) is contained in Appendix 7 of this packet. Although Part 211 refers to applications for foreign air carrier permits, the same evidentiary information is required of foreign carriers seeking exemption authority. If an applicant is filing both a permit and exemption application at the same time, it may file its evidentiary submissions with the permit application, and incorporate those submissions by reference in the exemption request.

- the identity of the applicant's claimed homeland;
- a description of the authority the applicant seeks and what services it proposes:
  - scheduled or charter or both
  - passenger or cargo or both
  - the specific routes (city pairs) involved
  - type of equipment in the applicant's fleet and those to be used for the proposed services;
- whether the services proposed are encompassed in a bilateral aviation agreement, and, if not, whether reciprocity exists for U.S. air carriers on the part of its homeland;
- names, addresses and citizenship of all directors, officers and key management personnel of the applicant;
- names and citizenship of all persons or entities holding five percent or more of the applicant's stock;
- whether any officer, director, manager, or stockholder holds any interest in any U.S. air carrier or other air carrier-related business;
- evidence of aircraft liability insurance meeting minimum Department requirements<sup>5</sup> and waiver of Warsaw liability limits;<sup>6</sup>
- a copy of the applicant's homeland economic license authorizing it to conduct the services it proposes;<sup>7</sup>
- a description of where and by whom maintenance of the applicant's aircraft will be conducted;
- a description of any cooperative working agreements with other air carriers;
- financial summaries, in U.S. dollars: profit and loss statements for the past two years' operations (if it is a new start-up carrier with no operating history, the amount and source of its initial capitalization);

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<sup>5</sup> A copy of the Department's insurance rule, 14 CFR Part 205, and instructions for completing the requisite certificate of insurance, are attached as Appendix 1.

<sup>6</sup> A copy of the Department's rule concerning this waiver, 14 CFR Part 203, and instructions for completing the requisite waiver form, are attached as Appendix 2.

<sup>7</sup> Although not a specific requirement of Part 211, we recommend that an applicant note, where applicable, whether it has been designated by its homeland government to provide the requested services under a bilateral aviation agreement between the United States and that government. If it has been so designated, the applicant should include a copy of that designation with its application.

- a traffic forecast and expected financial results of the applicant's first year of U.S. operations; and
- whether the applicant has been involved in any safety violations or fatal accidents in the past five years.

When the applicant files its request with the Department, it must at the same time serve copies of the application on U.S. carriers which hold authority to serve the applicant's homeland. The Department will also publish a public notice of the application. The reason for this notification is that, under the Department's rules, any interested party can comment on any application filed. Typically, U.S. air carriers use the application process to advise the Department of any problems they are having doing business in the applicant foreign air carrier's homeland. The communities to be served by the proposed service will also often file answers in support, citing the benefits to their residents and local economies that the service will provide. The existence of opposition by a U.S. air carrier or other party does not mean that the Department will necessarily deny an application, but is one factor that will be considered.

Applications must be filed with the Department's Docket Management Facility, in the manner described in 14 CFR §302.3, §302.202, or §302.302, as appropriate (a copy of the relevant sections of Part 302 is included in Appendix 7).<sup>8</sup> Applications must be accompanied by appropriate filing fees unless the Department has waived fees for foreign carriers of the applicant's homeland. A discussion of the Department's filing fees appears in Appendix 3.

The period available for interested persons to file answers to exemption applications is 15 days; for permits it is 21 days. The relevant regulations provide information on the filing of further rounds of pleadings.

### **DOT Processing Of Applications**

When a foreign air carrier files an application for first-time authority to serve the United States (whether by permit or exemption), the Department will provide a copy to the FAA, so that it can advise us whether or not the applicant and its homeland are in a position to meet applicable ICAO safety standards and requirements. We must receive positive advice from the FAA before we will authorize a new foreign air carrier to conduct U.S. operations in its own right (that is, using its own aircraft and crews).<sup>9</sup>

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<sup>8</sup> Additional requirements for the filing of applications, and other procedures for the processing of applications, are also contained in Part 302.

<sup>9</sup> The FAA provides this information under its International Aviation Safety Assessment (IASA) Program. A summary of the FAA's IASA Program is attached as Appendix 4.

While the overall standard we use in considering foreign air carrier applications is a public interest test, there are a number of factors we consider in reaching this public interest determination:

- whether the authority is covered by a bilateral agreement, and whether the applicant has been designated by its homeland;
- if the authority is not covered by an agreement, whether reciprocity and our overall aviation relations with the country support grant. Here we look at whether the air carrier's homeland government would allow U.S. air carriers to conduct comparable services, and whether the economic value that U.S. air carriers could derive from those services would be comparable to the value of the services proposed by the applicant air carrier;
- whether the air carrier is operationally and financially fit and has a positive compliance disposition. Here we look at whether the air carrier has experienced management, and whether its operating plan and financing appear reasonable. In this context, we are looking primarily at economic fitness, that is, whether the air carrier will be in a position to conduct its proposed operations without putting U.S. passengers' and shippers' funds at risk;
- the ownership and control of the air carrier. The Department has a policy of requiring a foreign air carrier to be substantially owned and effectively controlled by citizens of its claimed homeland. The reason for this standard is to prevent the economic benefits of a service from flowing to citizens of a third country with which the United States may have less than satisfactory aviation relations. In recognition of the growing importance of transborder investment, however, we will waive our ownership and control standard if, upon examination of an air carrier's non-homeland ownership, we conclude that there is nothing in the ownership structure that would be inimical to U.S. aviation policy or interests;
- the merits of any responsive pleadings that may have been filed to the application;
- whether the applicant has adequate insurance;
- whether there is an effective aviation security agreement in place between the United States and the applicant's homeland;<sup>10</sup>
- whether the applicant has filed with the Department and the National Transportation Safety Board a family support plan, if required, under the Foreign Air Carrier Family Support Act of 1997 (see Appendix 5), and
- whether the FAA has identified any safety problems with the air carrier.

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<sup>10</sup> Such an agreement must be in place before the Department will authorize services by a foreign air carrier. Further information relating to security agreements may be obtained from the Department's Office of International Aviation at (202) 366-2424.

## **Issuance Of Authority/Operational Conditions**

If the Department finds that the public interest warrants approval of the application, we will grant the foreign air carrier the exemption or foreign air carrier permit it has requested. The authority will specifically spell out the routes the foreign air carrier may serve if scheduled service is involved, and will state whether charters are authorized. It will also contain a number of operational conditions, including conditions requiring that the foreign carrier comply with all applicable FAA and Department regulations, maintain required insurance in effect, and file certain operational reports.

A question often asked of us is how long it will take for a new foreign air carrier to obtain initial economic authority, once it has filed its application. The answer varies with each case, because of the many factors involved. In the simplest and most straightforward case, namely where a foreign carrier seeks initial exemption authority and where its application is complete and meets all the requirements of our rules, there is no opposition to the application, there are no bilateral or other policy issues that would draw into question the public interest bases for approval, and there are no safety issues that are of concern to the FAA, then that foreign carrier applicant might reasonably expect action on its request within 30-60 days after filing. However, where an issue or problem arises as to any one of these factors, this can add appreciably to the processing time. Thus, we would caution foreign carrier applicants not to assume a set time frame for securing action on a request for authority, and would further remind them that a foreign air carrier may not sell, offer to sell, or otherwise hold out foreign air transportation services to the public unless and until it has received requisite economic authority from the Department.

## **Next Steps**

Once the foreign air carrier has received its Department exemption or permit, the next step is for it to obtain FAA operations specifications. The DOT authority must be obtained first, and only then will the FAA issue the operations specifications necessary for operations to begin. Information on the FAA's requirements may be obtained from:

Federal Aviation Administration  
Flight Standards Service (AFS-50)  
800 Independence Avenue, S.W.  
Washington, D.C. 20591  
Telephone: (202) 267-3719

While, as noted, the FAA will not issue operations specifications until after we issue a foreign carrier its economic authority, we would urge foreign carriers seeking initial operating authority to contact the FAA as early as possible in the process, so that they are in a position to meet the FAA's requirements for operations specifications with a minimum of delay once we grant the requisite economic authority.

Most foreign air carriers are required, under the Department's "Passenger Manifest Rule," 14 CFR Part 243, to file a plan with the Department summarizing how they will collect and transmit to the Department of State information on the identities of passengers aboard their aircraft in the event of an aircraft accident. This plan must be submitted before the foreign carrier commences any U.S. operations that are covered by the rule. A copy of Part 243 is included in Appendix 7.

Foreign air carriers must also arrange for the collection and transmittal of Passenger Facility Charges at certain U.S. airports, and for the payment of user fees to the U.S. Customs Service, the Immigration and Naturalization Service, and the U.S. Department of Agriculture Animal and Plant Health Inspection Service. Details of these requirements are included in Appendix 6.

### **Additional Department Authorities**

Once the foreign air carrier has received its exemption or foreign air carrier permit, it must still request and obtain additional Department authority to conduct certain types of operations, including Fifth Freedom charters, long term wet leases, and code-sharing operations. Information on the procedures for obtaining this authority may be obtained by calling the telephone number listed below.

### **Where to Get Help**

Questions concerning the licensing requirements described in this packet may be addressed to the Department's Office of International Aviation at (202) 366-2424. Questions concerning the requirements of other Federal Agencies referenced in this packet should be referred to those agencies.



**INSTRUCTIONS FOR COMPLETING  
CERTIFICATE OF INSURANCE -- OST FORM 6411**

This form 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 the Federal Aviation Administration, Air Transportation Division, Program Management Branch, AFS-260, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Line 1: Indicate the name and address of the insurance company.

Lines 2-3: Indicate the name and address of the foreign air carrier insured by the policy. If an insurance policy is issued to a person or company other than the foreign air carrier, the certificate of insurance must indicate that the foreign air carrier is also covered under that policy as an additional insured.

Line 4: Indicate 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: Indicate 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: Canadian Charter Air Taxi Operators with Part 294 Authority Only. This part applies only to Canadian air taxis conducting operations under 14 CFR Part 294, and not to foreign air carriers conducting operations under foreign air carrier permits or exemptions.

Section 2, Part B: Foreign Air Carriers Operating Small Aircraft. This part should be completed only for foreign air carriers operating aircraft that have 60 or fewer passenger seats or a maximum payload of 18,000 pounds or less. Indicate whether the insured foreign air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number in the specified place. Note that the minimum limits of accident liability insurance coverage required by the Department are already listed on the certificate.

Section 2, Part C: Foreign Air Carriers Operating Large Aircraft. This part should be completed only for foreign air carriers operating aircraft that have more than 60 passenger seats or a maximum payload of more than 18,000 pounds. Indicate whether the insured foreign air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number in the specified place. Note that the minimum limits of accident liability insurance coverage required by the Department are already listed on the certificate.

Section 3: Indicate whether the policy covers (1) all aircraft operated by the insured foreign air carrier, or (2) specify the general groups or types of aircraft which the policy covers, or (3) the registration (tail) number and the type of each aircraft covered by the policy (use additional pages if necessary, making sure each is signed by the persons signing OST Form 6411).

Section 4: Indicate the name, address, contact person, and telephone numbers (voice/fax) of the insurer and, if applicable, the broker. This form must be signed by an officer or authorized representative of the insurance company or broker.



**U.S. Department of Transportation**  
Office of the Secretary of Transportation

**AGENCY DISPLAY OF ESTIMATED BURDEN**

The public reporting burden for this collection of information is estimated to average 30 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation  
Federal Aviation Administration  
Flight Standards Service, AFS-260  
800 Independence Avenue, S.W.  
Washington, DC 20591

and

Office of Management and Budget  
Office of Information and Regulatory Affairs  
Paperwork Reduction Project 2106-0030  
Washington, DC 20503

**FOREIGN AIR CARRIERS CERTIFICATE OF INSURANCE**

**POLICIES OF INSURANCE FOR AIRCRAFT ACCIDENT BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**FILING INSTRUCTIONS:** File an original of this form with the Federal Aviation Administration, Flight Standards Service, Air Transportation Division, Program Management Branch, AFS-260, 800 Independence Avenue, S.W., Washington DC 20591.

*(Please type information, except signatures.)*

THIS CERTIFIES THAT: \_\_\_\_\_  
*(Name of Insurer)*

has issued a policy or policies of Aircraft Liability Insurance to \_\_\_\_\_

\_\_\_\_\_  
*(Name and address of Insured Foreign Air Carrier)*

effective from \_\_\_\_\_ until ten (10) days after written notice from the insurer or carrier of the intent to terminate coverage is received by the Department of Transportation.

NOTE: Part 205 of the Department's Regulations does not allow for a predetermined termination date, and a certificate showing such a date is unacceptable.

**1. The Insurer (Check One):**

- is licensed to issue aircraft insurance policies in the United States;
- is licensed or approved by the government of \_\_\_\_\_ to issue aircraft insurance policies; or
- is an approved surplus line insurer in the State(s) of \_\_\_\_\_

**2. The insurer assumes, under the policy or policies listed below, aircraft accident liability insured to minimums at least equal to the following during operation, maintenance, or use of aircraft in "foreign air transportation" as that term is defined in the Federal Aviation Act (Complete applicable section(s) below):**

**A. CANADIAN CHARTER AIR TAXI OPERATORS WITH PART 294 AUTHORITY ONLY**

The aircraft covered by this policy have: (1) 30 or fewer passenger seats and a maximum payload capacity of 7,500 pounds or less; and/or (2) a maximum authorized takeoff weight on wheels of no more than 35,000 pounds (Check separate or combined coverage as appropriate):

Separate Coverages:

Policy No.	Type of Liability	Minimum Limit	
		Each Person	Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	\$75,000	\$2,000,000 * (see note)
_____	Passenger Bodily Injury Liability	\$75,000	\$75,000 x 75% of total number of passenger seats installed in the aircraft

Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. \_\_\_\_\_ Amount of Coverage \_\_\_\_\_

This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

\* NOTE: If the aircraft covered by this policy have more than 30 passenger seats or more than a maximum payload capacity of 7,500 pounds, the minimum limit per occurrence shall be \$20,000,000.



*(Signature, if applicable)*

*(Signature)*

*(Date)*

*(Date)*

**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 (49 Stat. 3000; T.S. 876), 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, 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 \$10,00 limit on an air carrier's liability to passengers. The United States withdrew its denunciation when all air 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>1</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 U.S. and foreign 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 and dated by an officer of the foreign air carrier.
2. The signing person's title and the name and address of the foreign 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, Central Docket Management Facility, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590. If filed at the time of application for a foreign air carrier permit or exemption, the form should be filed separately, *i.e.*, not made a part of or an exhibit to the application.

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<sup>1</sup> This limit on liability should not be confused with the Department's mandatory liability insurance requirements for U.S. and foreign air carriers, which are required for all operations, and which are intended to provide a source of funds to make settlements in the event of an aircraft accident.



Docket OST 95-236

U.S. Department of Transportation

Office of the Secretary of Transportation

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 claim 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. [This 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.

(Signature and Date) \_\_\_\_\_

\*Either alternative may be used.

(Printed Name and Title)

(Name and Address of Carrier)

## Filing Fees

Under 14 CFR Part 389 of the Department's regulations, U.S. and foreign air carriers must pay filing fees to offset the cost to the U.S. Government of processing their applications. The fees (payable in U.S. dollars at the time application is made) are shown in 14 CFR Part 389 (included in Appendix 6).

The Department will waive these filing fees for foreign air carriers of countries that do not charge U.S. air carriers filing fees for comparable operating authority. As of the date this information packet was prepared, the Department had waived the filing fees for foreign air carriers of the countries shown below. The Department has issued a Notice of Proposed Rulemaking in Docket OST-99-5003 to amend Part 389 to bring the filing fees into line with the costs incurred in providing licensing services. Any final action in that proceeding may affect the amount of the filing fees, and the continuation of waivers of fees.

Foreign air carriers of the following countries hold either final or interim waivers from the requirement that they pay the filing fees set forth in 14 CFR §389.25 of the Department's rules:

### Final Waivers

Air Afrique Consortium homelands	El Salvador	Lebanon	Romania
Antigua and Barbuda	Finland	Luxembourg	Saudi Arabia
Argentina	France	Malaysia	Sinapore <sup>3</sup>
Aruba	Ghana <sup>1</sup>	Mali	South Africa
Australia	Greece	Malta	Spain
Belgium	Grenada	Marshall Islanda	St. Kitts/Nevis
Brazil	Guatemala	Nauru	St. Lucia
Canada	Hungary	Netherlands Antilles	St. Vincent/Grenadines
Chile	Iceland	Netherlands	Sweden
China	India	New Zealand	Switzerland
Colombia	Ireland	Nicaragua	Taiwan
Czech Republic	Israel	Norway	Thailand
Denmark	Italy	Pakistan	Tonga
Dominica	Jamaica <sup>2</sup>	Panama	Trinidad and Tobago
Dominican Republic	Japan	Papua New Guinea	United Kingdom
Ecuador	Jordan	Paraguay	Venezuela
Egypt	Kenya	Poland	Western Samoa
	Kuwait	Portugal	

### Interim Waivers

Austria	Costa Rica	Iraq	Russian Federation
Bulgaria	Germany <sup>4</sup>	Peru <sup>5</sup>	Zambia

1. Permit and exemption applications only.

2. Although Jamaica holds a waiver, Air Jamaica has advised the Department that Jamaica now charges fees to non-Jamaican carriers, and that as a result, Air Jamaica would resume paying filing fees.

3. Designated carriers only.

4. Except for tariff filings under codes 43, 44, and 45.

5. All-cargo services only.

## **OVERVIEW OF THE FEDERAL AVIATION ADMINISTRATION INTERNATIONAL AVIATION SAFETY ASSESSMENT (IASA) PROGRAM**

The Federal Aviation Administration (FAA) established the IASA program in August of 1992. The FAA's IASA program focuses on a country's ability, as opposed to that of the individual air carrier, to adhere to international standards and recommended practices for aircraft operations and maintenance established by the United Nation's technical agency for aviation, the International Civil Aviation Organization (ICAO).

The purpose of the IASA program is to ensure that all foreign air carriers that operate to or from the United States are properly licensed and are subject to safety oversight provided by a competent Civil Aviation Authority (CAA) in accordance with ICAO standards.

Before DOT issues a foreign air carrier initial economic authority to serve the United States, it notifies the FAA of the application and requests the FAA's evaluation of the respective CAA's capability for providing safety certification and continuing oversight for its international carriers. Upon DOT notification of a pending foreign air carrier application, if the FAA has not made a positive assessment of that country's safety oversight capabilities, the FAA Flight Standards Service will schedule an assessment visit to the CAA of the applicant's country.

Once the assessment visit has been completed, and the findings analyzed, the FAA will notify the CAA and interested U.S. Government agencies of the results of the assessment.

If a CAA is found to be meeting its minimum ICAO safety obligations, the FAA will forward a positive recommendation to DOT. If there is a pending foreign carrier application, DOT, upon receipt of a positive FAA recommendation with respect to that application (and in the absence of any contravening economic regulatory issues), will issue the requested economic authority, and FAA will issue operations specifications to permit the carrier to begin service to or from the United States.

When CAA's of countries with existing air carrier service to the U.S. are found to not meet ICAO standards, the FAA will request formal consultations with the CAA. The purpose of consultations is to discuss FAA's findings in detail and explore means to quickly rectify shortcomings found with regard to ICAO annexes, to enable that country's air carriers to continue U.S. service.

During the consultation phase, the operations of existing foreign air carriers from that country into the United States will be frozen at then-current levels. The FAA may also heighten its surveillance (ramp checks) of these carriers while they are in the United States. If the deficiencies noted during consultations are not successfully corrected within a reasonable period of time, FAA can proceed to notify DOT that carriers from that country do not have an acceptable level of safety oversight and can recommend that DOT revoke or suspend its carriers economic operating authority.

When CAA's of countries with no existing air carrier service to the United States are found to not meet ICAO standards, the FAA will notify DOT that the CAA does not have an acceptable level of safety oversight, and the applications for economic authority from carriers of that country will not be approved. The FAA will undertake a reassessment of the CAA after



receiving evidence of compliance with ICAO provisions. Subject to resources and the demands of scheduling, FAA will meet with CAA's for such reassessments at any mutually convenient time.

After the assessment visit, consultations (if necessary), and notifications have been completed, the FAA will publicly release the results of these assessments so that the flying public can make informed choices in their international flights.

The FAA has established two ratings for the status of countries at the time of the assessment:

**Category 1, Does Comply with ICAO Standards:** A country's civil aviation authority has been assessed by FAA inspectors and has been found to license and oversee air carriers in accordance with ICAO aviation safety standards.

**Category 2, Does Not Comply with ICAO Standards:** The Federal Aviation Administration assessed this country's civil aviation authority (CAA) and determined that it does not provide safety oversight of its air carrier operators in accordance with the minimum safety oversight standards established by the International Civil Aviation Organization (ICAO). This rating is applied if one or more of the following deficiencies are identified: (1) the country lacks laws or regulations necessary to support the certification and oversight of air carriers in accordance with minimum international standards; (2) the CAA lacks the technical expertise, resources, and organization to license or oversee air carrier operations; (3) the CAA does not have adequately trained and qualified technical personnel; (4) the CAA does not provide adequate inspector guidance to ensure enforcement of, and compliance with, minimum international standards; and (5) the CAA has insufficient documentation and records of certification and inadequate continuing oversight and surveillance of air carrier operations. This category consists of two groups of countries.

1. Countries that have air carriers with existing operations to the United States at the time of the assessment. While in Category 2 status, carriers from these countries will be permitted to continue operations at current levels under heightened FAA surveillance. Expansion or changes in services to the United States by such carriers are not permitted while in category 2, although new services will be permitted if operated using aircraft wet-leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a category 1 country that is authorized to serve the United States using its own aircraft.

2. Countries that do not have air carriers with existing operations to the United States at the time of the assessment. Carriers from these countries will not be permitted to commence service to the United States while in Category 2 status, although they may conduct services if operated using aircraft wet-leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a Category 1 country that is authorized to serve the United States with its own aircraft.

No other difference is made between these two groups of countries while in a category 2 status.

Note — For those countries not serving the U.S. at the time of the assessment, an asterisk "\*" will be added to their Category 2 determination.

Current FAA ratings of foreign countries' civil aviation authorities under the IASA program can be found at <http://www.faa.gov/avr/iasa/index.htm>.

## Foreign Air Carrier Family Support Act

The Foreign Air Carrier Family Support Act of 1997, as amended, requires, among other things, all foreign air carriers to develop and submit to the Department and the National Transportation Safety Board (NTSB) a plan to address the needs of families of passengers involved in aircraft accidents (similar requirements also apply to U.S. air carriers). The content and filing requirements for the plans are set forth in Public Laws 105-148 (111 Stat. 2681) and 106-181 (114 Stat. 61). Copies of the relevant legislation follow.

The requirement to submit a family support plan applies to all foreign carriers that seeking Department authority to conduct operations in foreign air transportation *except* those seeking authority to operate 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). Note that an applicant foreign air carrier *must* have a family support plan on file with the Department and NTSB before we will issue it economic authority to conduct U.S. operations.

Family support plans should be submitted to DOT and the NTSB at the following addresses:

Dockets -- Docket OST 98-3304  
U.S. Department of Transportation  
400 Seventh St., S.W. - Room PL-401  
Washington, D.C. 20590

Office of Public Affairs  
National Transportation Safety Board  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594

Additional information on the contents of family support plans may be obtained from the NTSB's website, <http://www.nts.gov/Family/family.htm>. Copies of all family support plans that have been filed to date are available for public inspection in Docket OST-98-3304, which may be viewed at <http://dms.dot.gov>.

# Foreign Air Carrier Family Support Act of 1997

(PL 105-148 (H.R.2476), signed December 16, 1997)

*An Act to amend title 49, United States Code, to require the National Transportation Safety Board and individual foreign air carriers to address the needs of families of passengers involved in aircraft accidents involving foreign air carriers.*

## SECTION 1. PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN FOREIGN AIR CARRIER ACCIDENTS.

(a) In General.--Chapter 413 of title 49, United States Code, is amended by adding at the end the following:

"Sec. 41313. Plans to address needs of families of passengers involved in foreign air carrier accidents

"(a) 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, that occurs within the United States; and

"(2) Passenger.--The term 'passenger' includes an employee of a foreign air carrier or air carrier aboard an aircraft.

"(b) Submission of Plans.--A foreign air carrier providing foreign air transportation under this chapter shall transmit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

"(c) Contents of Plans.--To the extent permitted by foreign law which was in effect on the date of the enactment of this section, a plan submitted by a foreign air carrier under subsection (b) shall include the following:

"(1) Telephone number.--A plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

"(2) Notification of families.--A process for notifying, in person to the extent practicable, the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life before providing any public notice of the names of such passengers. Such notice shall be provided by using the services of--

"(A) the organization designated for the accident under section 1136(a)(2); or

"(B) other suitably trained individuals.

"(3) Notice provided as soon as possible.--An assurance that the notice required by paragraph (2) shall be provided as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.

"(4) List of passengers.--An assurance that the foreign air carrier shall provide, immediately upon request, and update a list (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), to--

"(A) the director of family support services designated for the accident under section 1136(a)(1); and

"(B) the organization designated for the accident under section 1136(a)(2).

"(5) Consultation regarding disposition of remains and effects.--An assurance that the family of each passenger will be consulted about the disposition of any remains and personal

effects of the passenger that are within the control of the foreign air carrier.

"(6) Return of possessions.--An assurance that, if requested by the family of a passenger, any possession (regardless of its condition) of that passenger that is within the control of the foreign air carrier will be returned to the family unless the possession is needed for the accident investigation or a criminal investigation.

"(7) Unclaimed possessions retained.--An assurance that any unclaimed possession of a passenger within the control of the foreign air carrier will be retained by the foreign air carrier for not less than 18 months after the date of the accident.

"(8) Monuments.--An assurance that the family of each passenger will be consulted about construction by the foreign air carrier of any monument to the passengers built in the United States, including any inscription on the monument.

"(9) Equal treatment of passengers.--An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

"(10) Service and assistance to families of passengers.--An assurance that the foreign air carrier will work with any organization designated under section 1136(a)(2) on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following an accident.

"(11) Compensation to service organizations.--An assurance that the foreign air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) for services and assistance provided by the organization.

"(12) Travel and care expenses.--An assurance that the foreign air carrier will assist the family of any 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) Resources for plan.--An assurance that the foreign air carrier will commit sufficient resources to carry out the plan.

"(14) Substitute measures.--If a foreign air carrier does not wish to comply with paragraph (10), (11), or (12), a description of proposed adequate substitute measures for the requirements of each paragraph with which the foreign air carrier does not wish to comply.

"(d) Permit and Exemption Requirement.--The Secretary shall not approve an application for a permit under section 41302 unless the applicant has included as part of the application or request for exemption a plan that meets the requirements of subsection (c).

"(e) Limitation on Liability.--A foreign 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 foreign air carrier in preparing or providing a passenger list pursuant to a plan submitted by the foreign air carrier under subsection (c), unless the liability was caused by conduct of the foreign air carrier which was grossly negligent or which constituted intentional misconduct."

(b) Conforming Amendment.--The table of sections for such chapter is amended by adding at the end the following:

"41313. Plans to address needs of families of passengers involved in foreign air carrier accidents."

(c) Effective Date.--The amendments made by this section shall take effect on the 180th day following the date of the enactment of this Act.

**Public Law 106-181**, 106<sup>th</sup> Congress

**TITLE IV--FAMILY ASSISTANCE**

**SEC. 401. RESPONSIBILITIES OF NATIONAL TRANSPORTATION SAFETY BOARD.**

(a) Prohibition on Unsolicited Communications.--

(1) In general.--Section 1136(g)(2) is amended--

(A) by striking “transportation,” and inserting “transportation and in the event of an accident involving a foreign air carrier that occurs within the United States,”;

(B) by inserting after “attorney” the following:

“(including any associate, agent, employee, or other representative of an attorney)”;

(C) by striking “30<sup>th</sup> day” and inserting “45<sup>th</sup> day”.

(2) Enforcement.--Section 1151 is amended by inserting “1136(g)(2),” before “or 1155(a)” each place it appears.

(b) Prohibition on Actions To Prevent Mental Health and Counseling Services.--Section 1136(g) is amended by adding at the end the following:

“(3) Prohibition on actions to prevent mental health and counseling services.--No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.”.

(c) Inclusion of Nonrevenue Passengers in Family Assistance Coverage.--Section 1136(h)(2) is amended to read as follows:

“(2) Passenger.--The term ‘passenger’ includes--

“(A) an employee of an air carrier or foreign air carrier aboard an aircraft; and

“(B) any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight.”.

(d) Statutory Construction.--Section 1136 is amended by adding at the end the following:

“(i) Statutory Construction.--Nothing in this section 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.”

**SEC. 402. AIR CARRIER PLANS.**

(a) Contents of Plans.--

(1) Flight reservation information.--Section 41113(b) is amended by adding at the end the following:

“(14) An assurance that, upon request of the family of a passenger, the air carrier will inform the family of whether the passenger’s name appeared on a preliminary passenger manifest for the flight involved in the accident.”.

(2) Training of employees and agents.--Section 41113(b) is further amended by adding at the end the following:

“(15) An assurance that the air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.”.

(3) Consultation on carrier response not covered by plan.--Section 41113(b) is further amended by adding at the end the following:

“(16) An assurance that the air carrier, in the event that the air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the air carrier will consult with the Board and the Department of State on the provision of the assistance.”.

(4) Submission <<NOTE: 49 USC 41113 note.>> of updated plans.--The amendments made by paragraphs (1), (2), and (3) shall take effect on the 180<sup>th</sup> day following the date of the enactment of this Act. On or before such 180<sup>th</sup> day, each air carrier holding a certificate of public convenience and necessity under section 41102 of title 49, United States Code, shall submit to the Secretary and the Chairman of the National Transportation Safety Board an updated plan under section 41113 of such title that meets the requirements of the amendments made by paragraphs (1), (2), and (3).

(5) Conforming amendments.--Section 41113 is amended--

(A) in subsection (a) by striking “Not later than 6 months after the date of the enactment of this section, each air carrier” and inserting “Each air carrier”; and

(B) in subsection (c) by striking “After the date that is 6 months after the date of the enactment

of this section, the Secretary” and inserting “The Secretary”.

(b) Limitation on Liability.--Section 41113(d) is amended by inserting “, or in providing information concerning a preliminary passenger manifest,” before “pursuant to a plan”.

(c) Statutory Construction.--Section 41113 is amended by adding at the end the following:

“(f) Statutory Construction.--Nothing in this section 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.”.

#### **SEC. 403. FOREIGN AIR CARRIER PLANS.**

(a) Inclusion of Nonrevenue Passengers in Family Assistance Coverage.--Section 41313(a)(2) is amended to read as follows:

“(2) Passenger.--The term ‘passenger’ has the meaning given such term by section 1136.”.

(b) Accidents for Which Plan Is Required.--Section 41313(b) is amended by striking “significant” and inserting “major”.

(c) Contents of Plans.--

(1) In general.--Section 41313(c) is amended by adding at the end the following:

“(15) Training of employees and agents.--An assurance that the foreign air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

“(16) Consultation on carrier response not covered by plan.--An assurance that the foreign air carrier, in the event that the foreign air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the foreign air carrier will consult with the Board and the Department of State on the provision of the assistance.”.

(2) Submission <<NOTE: 49 USC 41313 note.>> of updated plans.--The amendment made by paragraph (1) shall take effect on the 180<sup>th</sup> day following the date of the enactment of this Act. On or before such 180<sup>th</sup> day, each foreign air carrier providing foreign air transportation under chapter 413 of title 49, United States Code, shall submit to the Secretary and the Chairman of the National Transportation Safety Board an updated plan under section 41313 of such title that meets the

requirements of the amendment made by paragraph (1).

#### **SEC. 404. DEATH ON THE HIGH SEAS.**

(a) Right of Action in Commercial Aviation Accidents.--The first section of the Act of March 30, 1920 (46 U.S.C. App. 761; popularly known as the “Death on the High Seas Act”) is amended--

(1) by inserting “(a) subject to subsection (b),” before “whenever”; and

(2) by adding at the end the following:

“(b) In the case of a commercial aviation accident, whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas 12 nautical miles or closer to the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, this Act shall not apply and the rules applicable under Federal, State, and other appropriate law shall apply.”.

(b) Compensation in Commercial Aviation Accidents.--Section 2 of such Act (46 U.S.C. App. 762) is amended--

(1) by inserting “(a)” before “the recovery”; and

(2) by adding at the end the following:

“(b)(1) If the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, additional compensation for nonpecuniary damages for wrongful death of a decedent is recoverable. Punitive damages are not recoverable.

“(2) In this subsection, the term ‘nonpecuniary damages’ means damages for loss of care, comfort, and companionship.”.

(c) Effective <<NOTE: 46 USC app. 761 note.>>

Date.--The amendments made by subsections (a) and (b) shall apply to any death occurring after July 16, 1996.

## Additional requirements:

Foreign air carriers must also comply with requirements of other Federal agencies, including the following:

### Passenger Facility Charges

Under U.S. law (49 U.S.C. § 40117, enacted as part of the Aviation Safety and Capacity Expansion Act of 1990) and FAA regulations (14 C.F.R. Part 158), the Department of Transportation has established a Passenger Facility Charge (PFC) program under which public agencies controlling airports can charge enplaning passengers a PFC, providing funds to expand the U.S. national airport system. The Secretary of Transportation authorizes PFCs to be collected and regulates the manner in which amounts are held and dispersed. Airports must obtain Department of Transportation approval to impose PFCs (up to \$3.00 per passenger) and may use PFCs only to finance specific projects. The Secretary is responsible for ensuring that the PFCs are paid promptly to the eligible agency for which they are collected.

U.S. and foreign air carriers are required to collect PFCs from each enplaning passenger at airports with an approved PFC project, subject to specific limitations. Carriers must collect a PFC for each passenger ticket they issue regardless of whether they operate all of the flight segments on the issued ticket and regardless of whether they operate at the airports due the PFC.<sup>1</sup> After collection, carriers are required to remit the PFC revenues, monthly, to each airport involved. Payment is due not later than the last day of the following calendar month that the PFCs are collected (or if that date falls on a weekend or holiday, the first business day thereafter).<sup>2</sup> Each carrier must file a report quarterly with each airport for which it collects PFCs to account for the funds collected and remitted. Carriers must also “establish and maintain an accounts payable system to handle PFC revenue with subaccounts for each [airport].” Finally, the PFC revenue collected by the airlines for the airports is to be regarded as “trust funds” held by collecting carriers as agents, for the beneficial interest of the airports.

The Department and the FAA are empowered to enforce the PFC and other aviation regulations, through various administrative, civil and criminal sanctions. Failure to remit collected PFCs constitutes the conversion of trust proceeds to unauthorized purposes and may result in criminal prosecution.

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<sup>1</sup> Under certain circumstances, U.S. and foreign air carriers may rely on other entities to collect the PFCs. For instance, when providing Public Charter flights under 14 C.F.R. Part 380 of the Department’s regulations for Public Charter operators, the carrier may rely on the Public Charter operator to collect PFCs.

<sup>2</sup> Recognizing the financial burden on carriers to collect and remit PFCs, the PFC regulations permit collecting carriers to retain a handling fee of \$.08 per PFC remitted. In addition, the regulations permit the carrier to retain interest earned on the PFC revenue until it is obligated to remit the funds to the airport. Interest on the PFC funds held beyond the proper date of remittance accrues to the airport, not the carrier.

Further information on U.S. and foreign air carriers' responsibilities under the PFC program can be obtained from:

Federal Aviation Administration  
PFC Branch (APP-530)  
800 Independence Avenue, S.W.  
Washington, D.C. 20591  
Telephone: (202) 267-3845

### **U.S. Customs, INS, and Agricultural Federal Inspection Fees**

Foreign air carriers conducting operations to and from the United States are subject to user fees for inspection services provided by the U.S. Customs Service, the Immigration and Naturalization Service (INS), and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS). Information on these requirements can be obtained from these agencies at the following addresses:

#### **Customs:**

U.S. Customs Service  
Financial Management Services Center  
Passenger Fee Team  
6026 Lakeside Blvd.  
Indianapolis, IN 46268

Contact: Penny Brown or Matt Maple  
Phone: 317-298-1200 ext. 1346 or 1359  
Fax: 317-298-1258  
Web: <http://www.customs.ustreas.gov>

#### **INS:**

Immigration & Naturalization Service  
Office of Finance  
User Fee Collections  
425 I Street, N.W.  
Washington, D.C. 20536

Contact: Georgia Mayers  
Phone: 202-305-9726  
Fax: 202-514-7860  
Web: <http://www.ins.usdoj.gov>

#### **APHIS:**

USDA, APHIS Business Services  
Accounts Receivable Team  
100 North Sixth Street, Suite 510c  
Minneapolis, MN 55403

Contact: Debbie Paulson  
Phone: 1-888-616-7595 ext. 2127  
Fax: 612-370-2293  
Web: <http://www.aphis.usda.gov/bad>



**Relevant Regulations**

14 CFR Part 203: Waiver of Warsaw Convention Liability Limits and Defenses

14 CFR Part 205: Aircraft Accident Liability Insurance

14 CFR Part 211: Applications for Permits to Foreign Air Carriers

14 CFR Part 243: Passenger Manifest Information

14 CFR Part 302: Rules of Practice in Proceedings (Subparts A - C only)

14 CFR Part 389: Fees and Charges for Special Services

These and other CFR Titles are available online at:

<http://www.access.gpo.gov/nara/cfr/index.html>

## **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.

Source: ER-1324, 48 FR 8044, Feb. 25, 1983, unless otherwise noted.

### **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.

[ER-1324, 48 FR 8044, Feb. 25, 1983, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

### **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.

[Docket No. 47939, 57 FR 40100, Sept. 2, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

### **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.

(The reporting provisions contained in paragraph (a) were approved by the Office of Management and Budget under control number 3024-0064.) [ER-1324, 48 FR 8044, Feb. 25, 1983, as amended by ER-1338, 48 FR 31013, July 6, 1983; Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

### **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.

[ER-1324, 48 FR 8044, Feb. 25, 1983, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

## **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.

Authority: 49 USC Chapters 401, 411, 413, 417.

Source: ER-1253, 46 FR 52577, Oct. 27, 1981, unless otherwise noted.

### **§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.

[ER-12536, 46 FR 52577, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992; Docket No. OST-96-1269, 61 FR 19165, May 1, 1996]

### **§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.

[Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

### **§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.

[ER-12536, 46 FR 52577, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

### **§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.

(Approved by the Office of Management and Budget under control number 2106-0030)

[Docket No. 47939, 57 FR 40100, Sept. 2, 1992, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

### **§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 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.

[Docket No. 47939, 57 FR 40101, Sept. 2, 1992; 57 FR 52590, Nov. 4, 1992]

#### **§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

<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.

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.

[ER-1253, 46 FR 52577, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40100, 40101, Sept. 2, 1992]

#### **§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.

[Docket No. 47939, 57 FR 40100, 40101, Sept. 2, 1992]

#### **§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. [ER-1282, 47 FR 16173, Apr. 15, 1982]

## **PART 211 -- APPLICATIONS FOR PERMITS TO FOREIGN AIR CARRIERS**

### **Subpart A -- General**

- 211.1 Purpose.
- 211.2 Applicability.

### **Subpart B -- General Requirements**

- 211.10 Filing Specifications.
- 211.11 Verification.
- 211.12 Filing and Service.
- 211.13 Amendments to applications.
- 211.14 Incorporation by reference.
- 211.15 Statements of fact.
- 211.16 Oral hearing.

### **Subpart C -- Information Requirements**

- 211.20 Initial foreign air carrier permit or transfer of permit.
- 211.21 Amendments or renewal of foreign air carrier permits.

### **Subpart D -- Freely Associated State Air Carriers**

- 211.30 Eligibility.
- 211.31 Application.
- 211.32 Issuance of permit.
- 211.33 Interstate and interstate authority.
- 211.34 Other permits.
- 211.35 Termination of eligibility.

Authority: 49 USC Chapters 401, 411, 413, 415, 417.

Source: ER-1386, 49 FR 33439, Aug. 23, 1984, unless otherwise noted.

Editorial Note: Nomenclature changes to Part 211 appear at 61 FR 34725, July 3, 1996.

### **Subpart A -- General**

#### **§211.1 Purpose.**

This part sets forth the filing and evidence requirements for foreign air carriers applying for authority to engage in foreign air transportation under section 41301 of Title 49 of the United States Code (Transportation).

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

#### **§211.2 Applicability.**

(a) Except as provided in paragraph (b) of this section, this part applies to all foreign air carriers seeking initial

foreign air carrier permits or the transfer, renewal, or amendment of an existing foreign air carrier permit.

(b) Canadian charter air taxi operators, foreign indirect air carriers of property, and foreign charter operators are not required to submit applications under this part. Instead, Canadian charter air taxi operators shall register under part 294 of this chapter, foreign indirect air carriers of property shall register under part 297 of this chapter, and foreign charter operators shall register under subpart F of part 380 of this chapter.

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

### **Subpart B -- General Requirements**

#### **§211.10 Filing specifications.**

(a) Except as provided in paragraph (b) of this section, applicants shall follow the requirements in §302.3 of this chapter as to execution, number of copies, and formal specifications of papers.

(b) Mexican air taxi operators filing applications for foreign air carrier permits authorizing charter flights across the Mexico-United States border with small aircraft (a maximum passenger capacity of 60 seats or less, or a maximum payload capacity of 18,000 pounds or less) shall file an original and two copies of the application. The application shall conform to the instruction document available from the Foreign Air Carrier Licensing Division, Office of International Aviation, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

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

(d) Applications shall state all weights, measures and monetary units in U.S. terms, and all text in English.

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984; 61 FR 34725, July 3, 1996]

#### **§211.11 Verification.**

Applications shall be verified and subscribed and sworn to before a Notary Public or other officer authorized to administer oaths in the jurisdiction in which the application is executed. An application verified before a United States consular officer meets the requirements of this section

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

### **§211.12 Filing and service.**

All types of applications for foreign air carrier permits (initial, renewal, amendment, or transfer) are filed as of the date the applications are received at the Department's Docket Facility. Each applicant shall serve those persons as required in part 302, subpart Q, of this chapter.

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

### **§211.13 Amendments to applications.**

An applicant shall submit any information required by this part that is omitted from the original application, or any additional information, as an amendment to the original application. Applicants shall consecutively number amendments to applications and shall comply with requirements of this subpart.

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

### **§211.14 Incorporation by reference.**

Where two or more applications are filed by a single carrier, the applicant may incorporate lengthy exhibits, or other documents, attached to one application into others by reference. The applicant may not incorporate by reference and update any information from a previous docket unless submitted within the past 2 years. The applicant must identify the docket, and the page number or exhibit number being incorporated, and state that there has been no change in that information since submitting the original information.

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

### **§211.15 Statements of fact.**

The applicant shall include only significant and relevant facts in an application. Each application shall contain adequate information with respect to the evidence required in subpart C of this part. The application may contain other information and data the applicant considers necessary to explain particular circumstances.

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

### **§211.16 Oral hearing.**

If an oral evidentiary hearing is convened, the applicant must make available witnesses who are competent and able to testify to the accuracy of the statements and documents submitted.

(Approved by the Office of Management and Budget under control number 3024-0068)  
[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

## **Subpart C -- Information Requirements**

### **§211.20 Initial foreign air carrier permit or transfer of a permit.**

A person applying for an initial foreign air carrier permit or the transfer of a permit shall submit the information listed below. The applicant must fully comply with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation, and include substitute information most closely approximating the information requested. The Department may require an applicant to provide additional information as necessary.

(a) State the name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.), and, if other than an individual, the name of the country under the laws of which it is organized and the statutory citation of such laws, if any.

(b) State the name and official address of the government air transport authority of applicant's country of citizenship having regulatory jurisdiction over applicant.

(c) Supply the following information regarding the services proposed:

- (1) A complete statement of the authority sought; and
- (2) A description of the services proposed, specifying:

(i) The point or points in the United States proposed to be served;

(ii) The frequency of service planned at the start of operations, indicating any seasonal variations; whether the service proposed is scheduled, non-scheduled, or charter; whether the service would be passenger, or property and mail, or a combination; and the type of equipment (and configuration) to be used; and

(iii) A service schedule stating the manner in which the service will be operated (*e.g.*, nonstop or multi-stop, and the identity of proposed intermediate traffic and nontraffic points).

(d) Provide the names, addresses (both residence and business), and citizenship of all Directors, Officers and key management personnel, including the President, Vice Presidents, the Directors or Supervisors of Operations, Maintenance, and Finance, and the chief pilot and chief



inspector. Indicate whether any of these persons are related by blood or marriage.

(e) Provide the names and citizenship of all persons holding five percent (5%) or more of the capital stock or capital of the applicant. Also indicate the number and percentage of shares of stock or percentage of capital held by each. If five percent or more of the applicant's stock is held by a corporation or partnership, set forth the name and citizenship of each person holding five percent or more of the entire capital stock or capital of that corporation or partnership and the respective interest of each. If any shares are held for the benefit of another person, give the name and citizenship of that person.

(f) If the applicant is not wholly owned by its homeland government, state whether the applicant (each officer, director, manager, or holder of five percent or more of the capital stock) holds any interest directly or indirectly (through brokers or holding companies) in any of the entities listed below. If no interest is held, so state.

(1) Any U.S. carrier;

(2) Any other foreign air carrier;

(3) Any persons engaged in the business of aeronautics; and

(4) Any common carrier, or any person whose principal business is the holding of stock in, or control of, any air carrier.

(g) Indicate the relationship between the applicant and its homeland government. If the applicant is wholly owned or substantially owned by the government, indicate which governmental department has responsibility for managerial decisions.

(h) State whether the applicant's insurance coverage meets or exceeds the liability limits of 14 CFR part 205. State the name(s) of its insurance carrier(s).

(i) Supply certified evidence, in English, of the applicant's operating authority issued by its government that relates to the operations proposed. This evidence must include a description of the applicant's present authority, the expiration date of this authority, and the manner in which it is expected to be renewed.

(j) Summarize the operating history of the applicant. Include the types of transportation services rendered, points served, etc., from the beginning of operations to the present. Also, if the applicant is a new airline (*i.e.*, an airline that began direct air services within the past 12 months), briefly summarize the business experience of each officer, director and key management personnel, emphasizing any air transportation experience.

(k) Provide a list of the aircraft owned, leased and operated by the applicant. State each aircraft registration number and the country of registration. If leased, state the address and citizenship of each lessor. Describe any plans for the acquisition or lease of additional aircraft if the present permit application is granted as proposed. If

any of the listed aircraft will not be used exclusively by the applicant, explain its proposed use. State whether any aircraft are or will be wet-leased.

(l) State where and by whom the maintenance of the aircraft is or will be performed. State whether the applicant's maintenance program complies with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7. Also state whether the applicant's home country is a contracting State to the Convention on International Civil Aviation.

(m) Briefly describe any agreements or cooperative working arrangements (*e.g.*, block-space, wet-lease), both oral and written, entered with and between the applicant, or on behalf of the applicant, and any U.S. or foreign air carrier, affecting the proposed services to the United States that are not on file with the Department. If there are no such agreements, so state.

(n) Supply financial data summaries, setting forth in U.S. dollars the applicant's profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal). These summaries must be accompanied by a statement from the applicant's official responsible for preparation of the summaries that the submissions are complete and accurate. These summaries must include the following data, but need not be more detailed than the financial data summaries published by ICAO:

(1) The profit and loss summary shall identify:

(i) Total air transport operating revenues (separated into three categories: passenger, cargo, and other transport revenues);

(ii) Total air transport operating expenses;

(iii) Operating result (difference between (i) and (ii));

(iv) Non-operating items; and

(v) Profit or loss after income taxes.

(2) The balance sheet summary shall state and identify:

(i) Current assets;

(ii) Flight equipment (after depreciation);

(iii) Other Assets;

(iv) Total assets (sum of (i) through (iii));

(v) Current liabilities;

(vi) Other liabilities;

(vii) Long-term debt;

(viii) Capital stock;

(ix) Retained earnings (balance including capital surplus); and

(x) Total liabilities and equity (sum of (v) through (ix)).

(o) Describe the amount, type and reason for financial assistance received or expected from the applicant's government, if any.

(p) Submit an estimate showing the total traffic and the financial results of the proposed services for the first full

year of normal operations and the supporting data employed to calculate the financial forecast.

(q) If the air transportation proposed is not covered by an air transport agreement, state in narrative form each of the elements of reciprocity or comity relied upon for the requested authority. If the authority requested is governed by an agreement, state whether the applicant has been formally designated by its homeland government, and, if so, cite the diplomatic note.

(r) To the extent not described in paragraph (q), state the policy of the applicant's homeland government with respect to U.S. carriers' applications for scheduled and charter authority. Specifically state whether the homeland government grants Fifth Freedom traffic rights to U.S. carriers.

(s) For the preceding 5 years, state whether the applicant has been involved in any safety or tariff violations or any fatal accidents. If so, furnish details.

(t) Submit 3 completed copies of OST Form 4523 (Waiver of liability limits under the Warsaw Convention).

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984; 61 FR 34725, July 3, 1996]

### **§211.21 Amendments or renewal of foreign air carrier permits.**

A person applying for an amendment or renewal of a foreign air carrier permit shall submit the information listed below. The applicant must comply fully with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation and include the substitute information most closely approximating the information requested. The Department may require an applicant to provide any additional information necessary.

(a) The information required in paragraphs (a), (b), (i), (o), (q), (r), and (s), of §211.20.

(b) Except if seeking renewal of existing authority, the information specified in paragraphs (c) and (p) of §211.20 regarding the new or altered services proposed to be operated.

(c) If the financial material for the applicant on file with the Department is more than 2 years old, financial summaries setting forth, in U.S. dollars, the applicant's profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal) as required in paragraph (n) of §211.20, together with the statement of completeness and accuracy required by that paragraph. If the financial material on file with the Department is 2 years old or less, the applicant may incorporate that information by reference as described in §211.14 of this part.

(d) If the ownership and control of the applicant are substantially unchanged, so state. If a change has occurred, the applicant shall respond to the paragraph in §211.20 that most closely relates to the change that has taken place.

(e) A statement that applicant's maintenance program continues to comply with the provisions of ICAO Pilots and Airmen Annexes 1, 6, (Part 1) and 7.

[ER-1386, 49 FR 33439, Aug. 23, 1984]

### **Subpart D --Freely Associated State Air Carriers**

Source: Amdt. No. 211-18, 52 FR 5442, Feb. 22, 1987, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart D appear at 61 FR 34725, July 3, 1996.

#### **§211.30 Eligibility.**

Foreign carriers owned and controlled by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States may, in accordance with the provisions of paragraph 5(b) of Article IX of the Federal Programs and Services Agreement, implementing section 221(a)(5) of the Compact of Free Association between the United States and those governments, apply for authority as "Freely Associated State Air Carriers." The permit application shall be labeled on the front page, "Application for Freely Associated State Foreign Air Carrier Permit."

#### **§211.31 Application.**

The application shall include, in addition to other requirements of this part, documentation clearly establishing:

(a) That the carrier is organized under the laws of the Federated States of Micronesia, the Marshall Islands, Palau or the United States;

(b) That substantial ownership and effective control of the carrier are held by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States;

(c) That citizens of other countries do not have interests in the carrier sufficient to permit them substantially to influence its actions, or that substantial justification exists for a temporary waiver of this requirement;

(d) That the Administrator of the Federal Aviation Administration has determined that the carrier complies with such safety standards as the Administrator considers to be required;

(e) That the government or governments of the Freely Associated States concerned have consented to the carrier's operation as a "Freely Associated State Air Carrier."

#### **§211.32 Issuance of permit.**

If the Department is satisfied that the applicant meets the requirements of §211.31 (a) through (e), and that grant of all or part of the requested authority would otherwise be in the public interest, the Department may, subject to Presidential review under section 801(a) of the Federal Aviation Act, issue a “Freely Associated State Foreign Air Carrier Permit” to the applicant, including such terms, conditions or limitations as the Department may find to be in the public interest.

### **§211.33 Interstate and interstate authority.**

(a) An application under this subpart may include a request, in addition to other foreign air transportation, for authority to engage in interstate air transportation between Guam, the Commonwealth of the Northern Mariana Islands and Honolulu, Hawaii, and interstate air transportation within the Commonwealth of the Northern Mariana Islands. A request for all or part of such limited interstate air transportation authority shall be supported by documentation establishing:

(1) The impact of such interstate transportation services on the economic projections of the carrier’s proposed operations;

(2) The need for such proposed interstate air transportation by the affected U.S. points;

(3) The economic impact of such interstate air transportation on service provided by other carriers providing essential air transportation services to eligible Freely Associated State points within the scope of part 272 of this chapter.

(b) The Department may grant a Freely Associated State Air Carrier authority to engage in all or part of the interstate air transportation requested in paragraph (a) of this section provided that the Department finds:

(1) That grant of such interstate air transportation authority would be in furtherance of the objectives of the Compact of Free Association and related agreements between the United States and the Freely Associated States, and would otherwise be in the public interest; and

(2) That grant of such interstate air transportation authority would not significantly impair the economic

viability of existing services providing essential air transportation to any eligible Freely Associated State point within the scope of part 272 of this chapter, or significantly increase compensation that may be required to maintain any such essential air transportation.

(c) The Department may, at any time, subject to Presidential review under section 41307, suspend, modify, or revoke such interstate authority if it concludes that the requirements specified in paragraph (b) of this section are not then being met.

[Amdt. No. 211-18, 52 FR 5442, Feb. 22, 1987, as amended at 61 FR 34725, July 3, 1996]

### **§211.34 Other permits.**

Nothing in this section shall be construed as limiting the authority of the Department to issue a foreign air carrier permit, other than a Freely Associated State Foreign Air Carrier Permit, to a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, that does not meet the requirements of this section.

### **§211.35 Termination of eligibility.**

The eligibility of a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, respectively, for issuance of a Freely Associated State Foreign Air Carrier Permit under this subpart shall exist only for such period as subparagraphs (a), (d), and (e) (eligibility for Freely Associated State essential air transportation subsidy compensation), or subparagraph (c) (limited interstate air transportation authority), of paragraph (5) of the Agreement on Civil Aviation Economic Services and Related Programs (Article IX of the Federal Programs and Services Agreement) remain in effect between the Government of those States and the Government of the United States, insofar as authority is conferred by such permits for purposes specified in those subparagraphs.

[Amdt. No. 211-18, 52 FR 5442, Feb. 22, 1987]

## **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 Conflicts with foreign law.

243.17 Enforcement.

Authority: 49 U.S.C. 40101, 40101nt., 40105, 40113, 40114, 41708, 41709, 41711, 41501, 41702, 41712, 44909, 46301, 46310, 46316; section 203 of Pub. L. 101-604, 104 Stat. 3066 (22 U.S.C. 5501-5513), Title VII of Pub. L. 104-264, 110 Stat. 3213 (22 U.S.C. 5501-5513) and Pub. L. 105-148, 111 Stat. 2681 (49 U.S.C. 41313.)

Source: Docket No. OST-95-950, 63 FR 8280, Feb. 18, 1998, unless otherwise noted.

### **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. [Doc. No. OST-95-950, 63 FR 8280, Feb. 18, 1998; 63 FR 9413, Feb. 25, 1998]

**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 this part may be subject to enforcement action by the Department.

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Authority: 39 U.S.C. 5402; 42 U.S.C., 4321, 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 461, 463, 471.

§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.

## **PART 389--FEES AND CHARGES FOR SPECIAL SERVICES**

### **Subpart A--General Provisions**

Sec.

389.1 Policy and scope.

### **Subpart B--Fees for Special Services**

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- 389.20 Applicability of subpart.
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- 389.25 Schedule of processing fees.
- 389.26 Special rules for tariff page filings.
- 389.27 Refund of fee.

Authority: Sec. 204, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

Source: OR-27, 33 FR 70, Jan. 4, 1968, unless otherwise noted.

### **Subpart A--General Provisions**

#### **Sec. 389.1 Policy and scope.**

Pursuant to the provisions of Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) as implemented by Bureau of Budget Circular A-25, dated September 23, 1959, the Board sets forth in this regulation the special services made available by the Board and prescribes the fees to be paid for these and various other services.

### **Subpart B--Fees for Special Services**

#### **Sec. 389.10 Applicability of subpart.**

This subpart describes certain special services made available by the Board and prescribes the fees and charges for these services.

#### **Sec. 389.11 Services available.**

Upon request and payment of fees as provided in subsequent sections, there are available, with respect to documents subject to inspection, services as follows:

- (a) Locating and copying records and documents.
- (b) Certification of copies of documents under seal of the Board.

(c) Subscriptions to publications of the Board.

(d) Transcripts of hearings.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-94, 40 FR 7242, Feb. 19, 1975]

#### **Sec. 389.12 Payment of fees and charges.**

The fees charged for special services may be paid by check, draft, or postal money order, payable to the Civil Aeronautics Board, except for charges for reporting services which are performed under competitive bid contracts with non-Government firms. Fees for reporting are payable to the firms providing the services.

#### **Sec. 389.13 Fees for services.**

Except for photocopy work, the basic fees set forth below provide for documents to be mailed with ordinary first class postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postal fees therefor will be added to the basic fee. Also, if special handling or packaging is required, costs therefor will be added to the basic fee. For photocopy work, postage will be in addition to the fee for copying.

#### **Sec. 389.14 Locating and copying records and documents.**

Public records and documents on file with the Civil Aeronautics Board will be located and copied upon request and payment of fees as set forth below:

(a) There shall be no charge in connection with searches for records or documents under this chapter.

(b) Photocopies of records or documents shall be made using the Board's facilities or by contractors.

(1) The fee for photocopying will be 15 cents per page.

(2) The fee for copying by contractors will be that established in the contracts with the Board and will be billed directly by those contractors.

(c) Copies of board data on magnetic tapes, or extractions of data from Board data tapes, will be made by the National Archives and Records Service (NARS) of the General Services Administration or by computer service bureaus.

(1) The Director, Bureau of Accounts and Statistics, furnishes many public records and documents contained on magnetic tape to NARS. Initial requests for data should be made directly to the Machine Readable Archives Division, National Archives and Records Services, General Services Administration, Washington, D.C. 20408, with the applicant directly reimbursing NARS for its copying or data extraction charges. When NARS does not have the requested data, the Director, Bureau of Accounts and Statistics, upon written request, will furnish the tapes for a reasonable length of time to a computer service bureau chosen by the applicant subject to the Director's approval. The computer service bureau shall assume the liability for

the cost of replacing any tape that may be damaged or destroyed by it.

(2) The fee for data copying by NARS will be determined by NARS.

(3) The fee for data copying by a computer service bureau shall be established by agreement between the requesting party and the computer service bureau.

(d) Where the Board's fee for service requested will exceed \$100, the service will not be performed until payment has been received. In such cases, the requester will be notified promptly of the amount of the fee, and the requested service will be performed as expeditiously as practicable following receipt of payment.

(e) Applications for waivers or modifications of any fees required to be paid to the Board under this section may be filed in accordance with the following:

(1) Each applicant shall set forth briefly and succinctly the relief that it seeks and the reasons why such relief should be granted. Waivers or modifications of stated fees shall be granted only where it is demonstrated that such action is in the public interest because furnishing of the information requested can be considered as primarily benefiting the general public.

(2) Applications requesting waivers or modifications of fees under this section shall be addressed to the Managing Director, who has been delegated authority by the Board to decide such applications in Sec. 385.12 of this chapter, and shall accompany the request for service under this section.

(3) The Managing Director shall either rule on the application or, at his discretion, pass the matter on to the Board for its determination. In acting upon such applications the Managing Director and the Board, where applicable, shall be guided by the procedures and requirements of Sec. 310.9(d) of this chapter.

(4) A decision by either the Managing Director or the Board pursuant to paragraph (d)(3) of this section is final and will not be subject to petitions for reconsideration.

[OR-94, 40 FR 7242, Feb. 19, 1975, as amended by OR-131, 43 FR 38574, Aug. 29, 1978]

### **Sec. 389.15 Certification of copies of documents.**

The Secretary of the Board will provide, on request, certifications or validation (with the Civil Aeronautics Board seal) of documents filed with or issued by the Board. Copies of tariffs filed with the Board will be certified only when such copies have been made under the Board's supervision upon request of the applicant. Charges for this service are as follows:

(a) Certification of the Secretary, \$2. This fee includes clerical services involved in checking the authenticity of records to be certified. If copying of the documents to be certified is required, the copying charges provided for in Sec. 389.14 will be in addition to the charges specified in this section.

(b) [Reserved]

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-35, 34 FR 5598, Mar. 25, 1969]

### **Sec. 389.16 Board publications.**

(a) Charges for publications. Charges have been established by the Superintendent of Documents for subscriptions to certain Board publications. A list of these publications together with information on how they can be ordered is contained in the "List of Publications", which is available on request from the Board's Publications Services Division, B-22, Washington, D.C., 20428.

(b) Free services. No charge will be made by the Board for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Board. No charge will be made for single copies of Board publications individually requested in person or by mail, except where a charge is specifically fixed for a publication at the time of its issuance.

(c) Reciprocal services. Arrangements may be made with the Board's Bureau of International Aviation for furnishing publications to a foreign country or to an international organization on a reciprocal basis.

[OR-178, 46 FR 8445, Jan. 27, 1981]

### **Sec. 389.17 Transcripts of proceedings.**

Transcripts of testimony and oral argument are furnished to the Board by a non-Government contractor for any proceeding in which the presiding officer has determined that such transcript should be made, and copies thereof may be purchased directly from the reporting firm, at prices and upon other terms and conditions specified in the contract made between the Board and the reporting firm, and currently in effect, pursuant to section 11 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. I). Any person may obtain from the Director, Office of Facilities and Operations, the name and address of the reporting firm with which the Board currently has such contract, as well as the contract prices then in effect for the various types of transcript and copying services covered by such contract.

[OR-84, 39 FR 22417, June 24, 1974]

## **Subpart C--Filing and Processing License Fees**

### **Sec. 389.20 Applicability of subpart.**

(a) This subpart applies to the filing of certain documents and records of the Department by non-government parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under subpart W of 14 CFR part 221, and contains that set of information which describes one (1) tariff fare, or that set



of information which describes one (1) related element associated with such tariff fare.

[Amdt. 389-37, 54 FR 2099, Jan. 19, 1989]

### **Sec. 389.21 Payment of fees.**

(a) Any document or record for which a filing fee is required by Sec. 389.25 shall be accompanied by either (1) a check, draft, or postal money order, payable to the Civil Aeronautics Board, in the amount prescribed herein, or (2) a request for waiver or modification of the filing fee.

(b) [Reserved]

(c) Where a document seeks authority or relief in the alternative and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required.

(d) Where a document relating to a single transaction or matter seeks multiple authorities or relief and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required. Where a document relating to more than one transaction or matter seeks multiple authorities or relief, the required filing fee shall be determined by combining the highest fees for each transaction or matter. For purposes of this paragraph, a specific number of charters or inclusive tours described in one application will be regarded as a single transaction or matter.

(e) No fee shall be returned after the document has been filed with the Board, except as provided in Secs. 389.23 and 389.27.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-27A, 33 FR 3633, Mar. 1, 1968; OR-50, 35 FR 15986, Oct. 10, 1970; 48 FR 642, Jan. 6, 1983; Amdt. 389-37, 54 FR 2099, Jan. 19, 1989]

### **Sec. 389.22 Failure to make proper payment.**

(a)(1) Except as provided in Sec. 389.23, documents (except tariff publications) which are not accompanied by filing fees shall be returned to the filing party, and such documents shall not be considered as filed by the Board.

(2) Except as provided in Sec. 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

(b) The filing fee tendered by a filing party shall be accepted by the Board office to whom payment is made, subject to post audit by the Chief of the Board's Finance Division and notification to the filing party within 30 days of any additional amount due. Not more than 5 days after receipt of the notification, the determination of the Chief, Finance Division, may be appealed to the Managing Director of the Board, who has been delegated authority by the Board to decide such appeals in Sec. 385.12 of this chapter. The filing party may submit to the Board a petition

for review of the Managing Director's decision pursuant to Sec. 385.50 of this chapter, and proceedings thereon will be governed by part 385, subpart C, of this chapter.

(c) The amount found due by the Chief, Finance Division, shall be paid within 10 days of notification except that (1) if that decision is appealed to the Managing Director, the amount due shall be paid within 10 days after the Managing Director notifies the filing party that he has affirmed or modified the decision of the Chief, Finance Division; and (2) if the decision of the Managing Director is appealed to the Board, the amount due shall be paid within 10 days after the Board notifies the filing party that it has affirmed or modified the staff decision. If the amount due is not paid, the document (except a tariff publication) shall be returned to the filing party along with the fee tendered, and such document shall be deemed to have been dismissed or withdrawn.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-96, 40 FR 20613, May 12, 1975; Amdt. 389-37, 54 FR 2099, Jan. 19, 1989]

### **Sec. 389.23 Application for waiver or modification of fees.**

(a) Applications may be filed asking for waiver or modification of any fee paid under this subpart. Each applicant shall set forth the reasons why a waiver or modification should be granted, and by what legal authority.

(b) Applications asking for a waiver or modification of fees shall be sent to the Managing Director of the Board, and shall accompany the document filed. Applicants may appeal the decision of the Managing Director to the Board under Sec. 385.50 of this chapter. When no petition for review is filed with the Board, or when the Board reviews the Managing Director's decision, if the amount found due is not paid within 10 days after receipt of notification of the final determination, the document shall be returned to the filing party.

(Approved by the Office of Management and Budget under control number 3024-0071)

[48 FR 642, Jan. 6, 1983, as amended by OR-215, 49 FR 6884, Feb. 24, 1984]

### **Sec. 389.24 Foreign air carriers.**

A foreign air carrier, or such carriers, if from the same country, acting jointly, may apply for a waiver of the requirements of this part based on reciprocity for U.S. air carriers contained in the requirement of their home governments, or as provided in a treaty or agreement with the United States. To apply for a waiver under this section, foreign air carriers shall send waiver requests to the Director, Bureau of International Aviation. The request should include applicable official government rules, decisions, statements of policy, or comparable evidence concerning filing fees for U.S. air carriers, or for all carriers serving that country. Once a waiver has been

granted for a specific country, no further waiver applications need be filed for that country.

(Approved by the Office of Management and Budget under control number 3024-0071)

[OR-209, 48 FR 10628, Mar. 14, 1983, as amended by OR-215, 49 FR 6884, Feb. 24, 1984]

**Sec. 389.25 Schedule of processing fees.**

(a) Document-filing fees.

Code	Document	
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	Interstate and Overseas Air Transportation Certificate of Public Convenience and Necessity Application under sec. 401:	
1	Charter	850
2	Scheduled Service	850
3	Dormant Authority	290
4	All-Cargo under sec. 418	670
5	Transfer	290
6	Air Taxi Registration	8
7	Scheduled Passenger Commuter Registration	670
8	Change of Name (registration of trade name or reissuance of certificate)	56
9	Exemption Request (General):	
10	Section 403	53
11	Section 401 (domestic)	280
12	Section 419	120
13	Service Mail Rate Petition	420
Foreign Air Transportation (U.S. and Air Carriers) Certificate of Public Convenience and Necessity (§ 401):		
14	Scheduled Service	900
15	Amendment to application	425
16	Charter Service	600
17	Amendment to application	200
18	Transfer	255
19	Change of Name (registration of trade name or reissuance of certificate)	56
Foreign Air Carrier Permit (sec. 402):		
20	Initial	760
21	Amendment/Renewal of permit	475
22	Amendment to application for a permit	215
Exemption:		
23	Section 403	53
Section 401/402:		
24	10 or fewer flights	77
25	More than 10 flights	360
26	Filed less than 10 days before effective date requested <u>1</u>	17
27	Other (U.S. and foreign air carriers)	360
28	Emergency cabotage (sec. 416(b)(7))	360
29	Relief for U.S. (sec. 101) and foreign (sec. 416)	

indirect air carriers 370

Undocketed Items:

30	Canadian Charter Air Taxi Registration	30
31	Foreign Freight Forwarder Registration	11
32	Foreign Tour Operator Registration	10
33	Foreign Aircraft Permit (part 375)	25
34	Special Authorization (part 375)	12
35	Charter Statement of Authorization	8
36	Intermodal Statement of Authorizatio	10
37	Special Authority (part 216)	37
38	Items 33-37 if filed less than time required before effective date <u>1</u> /	11
39	IATA resolutions	61

Other (U.S. and foreign air carriers)

Charters:

40	Public Charter Prospectus	39
41	OMPC Operation Authorization	665
42	Waiver of Charter Regulations	39

Tariffs:

43	Pages	2
44	Special Tariff Permission	12
45	Waiver of Tariff Regulations	12
46	Approval of Interlocking Relationships	415
47	Merger or Acquisition of Control	1080
47a	Exemption request	71

Agreements filed under section 412:

48	Prior Approval (docketed)	1080
49	Routine (nondocketed)	64
50	Application for free/reduced-rate transportation	16

1/ Additional.

(b) Electronic Tariff Filing Fees. The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled records, shall be 5 cents per record; Provided: That no fee shall be assessed for those records submitted to the Department pursuant to Sec. 221.500(b)(1) of this subpart.

[48 FR 643, Jan. 6, 1983, as amended by OR-206, 48 FR 1941, Jan. 17, 1983; OR-210, 48 FR 15615, Apr. 12, 1983; 53 FR 17924, May 19, 1988; Amdt. 389-37, 54 FR 2099, Jan. 19, 1989]

**Sec. 389.26 Special rules for tariff page filings.**

(a) Tariffs issued by carriers. The filing fee for tariff pages filed by U.S. air carriers will be charged even if the tariff includes matters involving participating foreign air carriers. It will also be charged if the tariff is issued by a foreign air carrier and includes matters involving participating U.S. air carriers, unless the foreign air carrier has obtained a waiver under Sec. 389.24. The fee will not be charged for a blank looseleaf page unless it cancels matter in the preceding issue of the page.

(b) Tariffs issued by publishing agents. (1) If the tariff is issued for one or more air carriers exclusively, the fee will be charged for each page.

(2) If the tariff is issued for one or more air carriers and one or more foreign air carriers, the fee will be charged for each page, except for those pages that the issuing agent states contain only:

(i) Matters pertaining exclusively to foreign air carriers that have been granted a waiver, or

(ii) Changes in matters pertaining to foreign air carriers that have been granted a waiver and that are included on the same page with other matters that are reissued without change.

(3) The fee will not be charged for a blank looseleaf page unless it cancels matters in the preceding page.

(4) No fee will be charged when two pages are published back-to-back, one page is not subject to the fee under paragraph (b)(2), and the page on the reverse is issued without substantive change.

(5) The fee will be charged for two looseleaf pages containing a correction number check sheet unless all other pages of the tariff are exempt from the fee.

[48 FR 643, Jan. 6, 1983]

**Sec. 389.27 Refund of fee.**

(a) Any fee charged under this part may be refunded in full or in part upon request if the document for which it is charged is withdrawn before final action is taken. Such requests shall be filed in accordance with Sec. 389.23.

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Board's cost in providing the service. The application shall be filed with the Board's Comptroller and shall contain: the amount paid, the date paid, and the category of service.

(Approved by the Office of Management and Budget under control number 3024-0071)

[48 FR 643, Jan. 6, 1983, as amended by OR-215, 49 FR 6884, Feb. 24, 1984; 49 FR 32564, Aug. 15, 1984]