



PART III

APPLICABLE DEPARTMENT OF TRANSPORTATION REGULATIONS

CFR Parts 200, 201, 203, 204, 205, 215, 298, and 302

PART 200--DEFINITIONS AND INSTRUCTIONS

Sec.

200.1 Terms and definitions.

200.2 Instructions.

Sec. 200.1 Terms and definitions.

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

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

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

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

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

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

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

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

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

Sec. 200.2 Instructions.

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

PART 201--AIR CARRIER AUTHORITY

UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES CODE

Subpart A--Application Procedures

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SUBPART A--APPLICATION PROCEDURES

Sec. 201.1 Formal requirements.

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

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

Sec. 201.2 Amendments.

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

Sec. 201.3 Incorporation by reference.

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

Sec. 201.4 General provisions concerning contents.

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

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

(c) Requests for authority to engage in interstate air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation under section 41102 of the Statute shall not be included in the same application with requests for authority to engage in charter air transportation under section 41102 of the Statute or with requests for authority to engage in interstate all-cargo air transportation under section 41103 of the Statute.

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

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

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

Sec. 201.5 Advertising and sales by applicants.

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

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

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

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

SUBPART B--CERTIFICATE TERMS, CONDITIONS, AND LIMITATIONS

Sec. 201.6 Applicability.

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

Sec. 201.7 General certificate conditions.

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

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

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

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

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

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

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

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Sec. 203.1 Scope.

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

Sec. 203.2 Applicability.

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

Sec. 203.3 Filing requirements for adherence to Montreal Agreement.

All direct U.S. and foreign air carriers shall have and maintain in effect and on file in the Department's Documentary Services Division (Docket 17325) on OST Form 4523 a signed counterpart to Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and Hague Protocol approved by CAB Order E23680, dated May 13, 1966 (the Montreal Agreement), and a signed counterpart of any amendment or amendments to such Agreement that may be approved by the Department and to which the air carrier or foreign air carrier becomes a party. U.S. air taxi operators registering under part 298 of this chapter and Canadian charter air taxi operators registering under part 294 of this chapter may comply with this requirement by filing completed OST Forms 4507 and 4523, respectively, with the Department's Office of Aviation Analysis. Copies of these forms can be obtained from the Office of Aviation Analysis, Special Authorities Division.

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

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

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

(c) Participation in the Montreal Agreement, whether by signing the Agreement, filing a signed counterpart to it under Sec. 203.3, or by operation of law under Sec. 203.5, shall constitute a special agreement between the carrier and its passengers as a condition of carriage that a liability limit of not less than \$75,000 (U.S.) shall apply under Article 22(1) of the

Warsaw Convention for passenger injury and death. Such participation also constitutes a waiver of the defense under Article 20(1) of the Convention that the carrier was not negligent.

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

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

PART 204--DATA TO SUPPORT FITNESS DETERMINATIONS

Subpart A--General Provisions

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204.7 Revocation for dormancy.

SUBPART A--GENERAL PROVISIONS

Sec. 204.1 Purpose.

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

Sec. 204.2 Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Between a place in --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBPART B--FILING REQUIREMENTS

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

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

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

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

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

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

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

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

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

(1) Their names and addresses;

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

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

(4) The citizenship of each; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The date of the occurrence;

(2) The type of flight;

(3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;

(4) A description of any damage to the aircraft;

(5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and

(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

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

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

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

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

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

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

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

Sec. 204.4 Carriers proposing to provide essential air service.

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

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

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

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

(i) The number of each type of such aircraft;

(ii) The conditions under which such aircraft will be available to the carrier;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 204.7 Revocation for dormancy.

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

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

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

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

PART 205 -- AIRCRAFT ACCIDENT LIABILITY INSURANCE

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

§205.1 Purpose.

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

§205.2 Applicability

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

§205.3 Basic requirements.

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

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

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

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

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

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

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

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

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

§205.4 Filing of evidence of insurance.

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

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

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

§205.5 Minimum coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§205.6 Prohibited exclusions of coverage.

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

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

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

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

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

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

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

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

¹ 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.

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

§205.8 Cargo liability disclosure statement.

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

PART 215--USE AND CHANGE OF NAMES

Sec.

215.1 Applicability.

215.2 Purpose.

215.3 Use of name.

215.4 Change of name or use of trade name.

215.5 Procedure in case of similarity of names.

215.6 Acknowledgment of registration.

Sec. 215.1 Applicability.

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

Sec. 215.2 Purpose.

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

Sec. 215.3 Use of name.

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

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

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

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

Sec. 215.5 Procedure in case of similarity of names.

The Department will compare the proposed name in any registration filed under this part or in an application for new, reissued, or transferred authority with a list of names used by existing certificated, commuter and foreign direct air carriers. The Department will notify the applicant of any other

certificated, foreign or commuter carriers that may have an identical or similar name. The registrant must then notify those carriers of its registration. The notification will identify the applicant and state its proposed name or the name requested, area of operation or proposed area of operation, type of business, and other pertinent matters. The registrant must then file a certificate of service of the notification with the Department.

Sec. 215.6 Acknowledgment of registration.

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

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

Subpart A--General

Sec.

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

Subpart B--Exemptions

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

Subpart C--Registration and Re-registration for Exemption

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

Subpart D--Limitations and Conditions on Exemptions and Operations

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

Subpart E--[Reserved]

Subpart F--Reporting Requirements

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

Subpart G--Public Disclosure of Data

- 298.70 Public disclosure of data.

Subpart H--Violations

- 298.80 Enforcement.

Authority: 49 U.S.C. 329 and chapters 411 and 417.

Source: ER-929, 40 FR 42855, Sept. 17, 1975, unless otherwise noted.

SUBPART A--GENERAL

Sec. 298.1 Applicability of part.

This part establishes a classification of air carriers known as "air taxi operators" provides certain exemptions to them

from some of the economic regulatory provisions of Subtitle VII of Title 49 of the United States Code (Transportation) and specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in interstate and/or foreign air transportation in all States, Territories and possessions of the United States. This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

[ER-1399, 50 FR 19, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

Sec. 298.2 Definitions.

As used in this part:

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

Air Transportation means interstate air transportation, foreign air transportation, or the transportation of mail by aircraft as defined by the Statute.²

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

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

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

Certificated carrier means an air carrier holding a certificate issued under section 41102 of the Statute.

Commuter air carrier means an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to its

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

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

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

published flight schedules that specify the times, days of the week, and places between which those flights are performed.

Departure means takeoff from an airport.

Flight stage means the operation of an aircraft from takeoff to landing.

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

Maximum certificated takeoff weight means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate.³

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

Maximum payload capacity means the maximum certificated take-off weight of an aircraft, less the empty weight,⁴ less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for the weight of the crew, oil, and fuel is as follows:

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

(2) Oil--350 pounds,

(3) Fuel--the minimum weight of fuel required under FAA regulations⁵ for a flight between domestic points 200 miles apart. Provided, however, That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA,⁶ maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

Mile means a statute mile, i.e., 5,280 feet.

Nonrevenue passenger means a person traveling free or under token charges, except those expressly named in the definition of revenue passenger; a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. (This definition is for 14 CFR part 298 traffic-reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) The definition includes, but is not limited to, the following examples of passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business or traveling to or from such duty;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties or traveling to or from such duty;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting air transportation;

(14) Air marshals and other Transportation Security officials acting in their official capacities and while traveling to and from their official duties; and

(15) Other authorized persons, when such transportation is undertaken for promotional purpose.

Passengers carried means passengers on board each flight stage.

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

Reporting carrier for Schedule T-100 purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority.

Revenue passenger means a passenger for whose transportation an air carrier receives commercial remuneration. (This definition is for 14 CFR part 298 traffic-reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) This includes, but is not limited to, the following examples:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth, student, etc.);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

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

³ This weight may be found in the airplane operating record or in the airplane flight manual, which is incorporated by regulation into the airworthiness certificate.

⁴ Empty weight is defined in section 03 of part 241 as follows: the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

⁵ Assumes VFR weather conditions and flights not involving extended overwater operations.

⁶ The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.

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

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

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

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

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

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

Ton means a short ton, i.e., 2,000 pounds.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-957, 41 FR 28512, July 12, 1976; ER-1039, 43 FR 1490, Jan. 10, 1978; ER-1123, 44 FR 30083, May 24, 1979; ER-1251, 46 FR 51374, Oct. 20, 1981; ER-1251, 46 FR 53023, Oct. 28, 1981; ER-1278, 47 FR 608, Jan. 6, 1982; ER-1289, 47 FR 12949, Mar. 26, 1982; ER-1399, 50 FR 19, Jan. 2, 1985; Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, 43528, Aug. 22, 1995; 67 FR 49231, July 30, 2002; 67 FR 58690, Sept. 18, 2002]

Sec. 298.3 Classification.

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

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

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

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

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

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

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

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-1039, 43 FR 1490, Jan. 10, 1978; ER-1213, 46 FR 12478, Feb.

17, 1981; ER-1333, 48 FR 8051, Feb. 25, 1983; Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

Sec. 298.4 Requests for statement of authority.

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

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

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

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

[ER-1039, 43 FR 1490, Jan. 10, 1978, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

SUBPART B--EXEMPTIONS

Sec. 298.11 Exemption authority.

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

(a) Section 41101;

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

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

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

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

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

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

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

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

(d) Section 41310, except that the requirements of that subsection shall apply to through service provided pursuant to tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers and to

transportation of the handicapped to the extent that that is required by part 382 of this chapter;

(e) Section 41902;

(f) Section 41708.

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-1251, 46 FR 51374, Oct. 20, 1981; ER-1278, 47 FR 608, Jan. 6, 1982; ER-1295, 47 FR 25936, June 16, 1982; ER-1389, 50 FR 31142, July 31, 1985; Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43528, Aug. 22, 1995]

Sec. 298.12 [Reserved]

Sec. 298.13 Duration of exemption.

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

[ER-1278, 47 FR 608, Jan. 6, 1982, as amended at 60 FR 43528, Aug. 22, 1995]

SUBPART C—REGISTRATION AND RE-REGISTRATION FOR EXEMPTION

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

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

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

(c) Registration by all commuter air carriers, and by those air taxi operators with a mailing address in any U.S. State or Territory except Alaska, shall be accomplished by filing with the Department's Office of Aviation Analysis (or with the Department's Alaska Aviation Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513, for air taxi operators that are not also commuter air carriers and that have a mailing address in the State of Alaska) the following:

(1) OST Form 4507, executed in duplicate.⁷ This form shall be certified by a responsible official and shall include the following information:

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

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

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

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

(v) A list of the aircraft that the carrier proposes to operate, or, in the case of an amendment to the registration, the aircraft that it is currently operating in its air taxi or commuter

air carrier operations, and the aircraft type, FAA registration number and passenger capacity of each aircraft;

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

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

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

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

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

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

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

(The reporting requirements contained in paragraph (c)(2) were approved by the Office of Management and Budget under control number 3024-0007. The reporting requirements contained in paragraph (c)(1) were approved under control number 3024-0008. The reporting requirements contained in paragraph (c)(4) were approved under control number 3024-0064.)

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-954, 41 FR 25890, June 23, 1976; 41 FR 27314, July 2, 1976; 41 FR 28786, July 13, 1976; ER-1208, 46 FR 8444, Jan. 27, 1981; ER-1213, 46 FR 12478, Feb. 17, 1981; ER-1318, 48 FR 3718, Jan. 27, 1983; ER-1333, 48 FR 8051, Feb. 25, 1983; 49 FR 28240, July 11, 1984; Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992; 60 FR 43528, Aug. 22, 1995]

Sec. 298.22 Processing by the Department.

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

[ER-1213, 46 FR 12478, Feb. 17, 1981, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992]

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

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

(1) A change in its name or address;

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

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

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

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

⁷ OST Form 4507 is filed as part of the original document and can be obtained from the Office of Aviation Analysis, Special Authorities

(The reporting requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024-0008.)

[ER-1213, 46 FR 12478, Feb. 17, 1981, as amended at 49 FR 28240, July 11, 1984; Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992]

Sec. 298.24 Cancellation of the registration.

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

- (a) The operator notifies the Department that it is ceasing operations;
- (b) The operator's insurance coverage changes or lapses;
- (c) The operator fails to file an amended registration when required by Sec. 298.23;
- (d) The operator's operating authorization is revoked by the Federal Aviation Administration;
- (e) In the case of a commuter air carrier, the Department finds that the carrier is not fit, willing, and able to conduct scheduled service.

[ER-1213, 46 FR 12478, Feb. 17, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

SUBPART D--LIMITATIONS AND CONDITIONS ON EXEMPTIONS AND OPERATIONS

Sec. 298.30 Public disclosure of policy on consumer protection.

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

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

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

(Approved by the Office of Management and Budget under control number 3024-0074)

[ER-1378, 49 FR 14086, Apr. 10, 1984, as amended at 49 FR 28240, July 11, 1984; Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

Sec. 298.31 Scope of service and equipment authorized.

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

[ER-1213, 46 FR 12478, Feb. 17, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

Secs. 298.32-298.34 [Reserved]

Sec. 298.35 Limitations on carriage of mail.

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

[Docket No. 47939, 57 FR 40104, Sept. 2, 1992]

Sec. 298.36 Limitation on use of business name.

(a) An air taxi operator or commuter air carrier in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier certificate is issued pursuant to section 44702 of the Statute by the Federal Aviation Administration, and in which it is registered with the Department under this part.

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

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

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

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended at 53 FR 17924, May 19, 1988; Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992; 60 FR 43528, Aug. 22, 1995]

Sec. 298.37 Prohibition of services not covered by insurance.

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

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992]

Sec. 298.38 Security arrangements for operating Public Charters.

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

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

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

[ER-1140, 44 FR 49444, Aug. 23, 1979, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

SUBPART E--[RESERVED]

SUBPART F--REPORTING REQUIREMENTS

Sec. 298.60 General reporting instructions.

(a) Each commuter air carrier and each small certificated air carrier shall file with the Department's Bureau of Transportation Statistics (BTS) the applicable schedules of BTS Form 298-C, "Report of Financial and Operating Statistics for Small Aircraft Operators" and Schedule T100, "U.S. Air

Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market” as required by this section.

(b) A single copy of the BTS Form 298-C report shall be filed quarterly with the Office of Airline Information (OAI) for the periods ended March 31, June 30, September 30 and December 31 of each year to be received on or before May 10, August 10, November 10, and February 10, respectively. An electronic filing of the monthly Schedule T-100 is due at OAI within 30 days after the end of each month. Due dates falling on a Saturday, Sunday or Federal holiday will become effective on the next workday.

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

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

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

[ER-1399, 50 FR 19, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995; 67 FR 49231, July 30, 2002]

Sec. 298.61 Reporting of traffic statistics.

(a) Each commuter air carrier and small certificated air carrier shall file Schedule T-100, “U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market.”

(b) Schedule T-100 shall be filed monthly as set forth in sec. 298.60.

(1) Schedule T-100 collects summarized flight stage data and on-flight market data from revenue flights. All traffic statistics shall be compiled in terms of each flight stage as actually performed. The detail T-100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. The first grouping, the nonstop segment information, is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) Joint-service operations. The Department may authorize joint service operations between two direct air carriers. Examples of these joint-service operations are: blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T-100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director--Airline Information (fax no. 202 366-3383, telephone no. 202 366-4373). Joint-service operations are reported in Schedule T-100 in accordance with this paragraph (b).

(iii) Operational control. The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint-service operations.

(c) Service classes. (1) The statistical classifications are designed to reflect the operating characteristics attributable to each distinctive type of service offered. The combination of scheduled and nonscheduled operations with passenger, all-cargo, and military services are placed into service classes as follows:

Code	Type of Service
F.....	Scheduled Passenger/Cargo
G.....	Scheduled All-Cargo
L.....	Nonscheduled Civilian Passenger/Cargo
P.....	Nonscheduled Civilian Cargo
N.....	Nonscheduled Military Passenger/Cargo
R.....	Nonscheduled Military Cargo

(2) Scheduled services include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections of scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first class, coach, and mixed passenger/cargo service.

(3) Nonscheduled services include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules.

(d) Air transport traffic and capacity elements. (1) Within each of the service classifications, carriers shall report air transport traffic and capacity elements. The elements are reported on segment or market records as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*

270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)	S		

*CFD = Computed by DOT from detail Schedule T-100 and T-100(f) data.

(2) [Reserved]

(e) These reported items are further described as follows:

(1) *Reporting period date*. The year and month to which the reported data are applicable.

(2) *Carrier, Carrier entity code*. Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request; OAI's address is Office of Airline Information, BTS, DOT Room 4125, K-14, 400 Seventh Street, SW., Washington, DC 20590-0001.

(3) *Service class code*. The service class codes are prescribed in section 298.61(c). In general, classes are divided into two broad categories, either scheduled or nonscheduled, where scheduled = F + G and nonscheduled = L + N + P + R.

(4) *Record type code*. This code indicates whether the data pertain to non-stop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code*. This code represents the aircraft types, as described in the BTS' Accounting and Reporting Directives.

(6) *Origin, Destination airport code(s)*. These codes represent the industry designators. An industry source of these industry designator codes is the Official Airline Guide (OAG). OAI assigns codes upon request if not listed in the OAG.

(7) *110 Revenue passengers enplaned*. The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T-100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. In the domestic entity, report only the total revenue passengers enplaned in item 110.

(8) *130 Revenue passengers transported*. The total number of revenue passengers transported over a single flight stage, including those already on the aircraft from a previous flight stage. In the domestic entity, report only the total revenue passengers transported in item 130.

(9) *140 Revenue passenger-miles*. Computed by multiplying the inter-airport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned*. The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 Mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) *217 Enplaned freight*. The total weight of revenue freight enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of freight in a market.

(12) *219 Enplaned mail*. The total weight of mail enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of mail in a market.

(13) *230 Revenue tons transported*. The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(14) *237 Transported freight*. The total weight of freight transported over a single flight stage, including freight already on the aircraft from a previous flight stage.

(15) *239 Transported mail*. The total weight of mail transported over a single flight stage, including mail already on the aircraft from a previous flight stage.

(16) *240 Revenue ton-miles--total*. Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(17) *241 Revenue ton-miles--passenger*. Equals the number of passengers times 200, times inter-airport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(18) *247 Revenue ton-miles--freight*. Equals the volume of freight in whole tons times the inter-airport distance.

(19) *249 Revenue ton-miles--mail*. Equals the volume of mail in whole tons times the inter-airport distance.

(20) *270 Available capacity-payload*. The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail, and freight applicable to the aircraft with which each flight stage is performed.

(21) *280 Available ton-miles*. The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(22) *310 Available seats*. The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Scheduled and nonscheduled available seats are reported in item 130.

(23) *320 Available seat-miles*. The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(24) *410 Revenue aircraft miles flown*. Revenue aircraft miles flown are computed based on the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the inter-airport distances (Code 501).

(25) *430 Revenue aircraft miles scheduled*. The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(26) *501 Inter-airport distance*. The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official inter-airport mileage may be obtained from the Office of Airline Information.

(27) *510 Revenue aircraft departures performed*. The number of revenue aircraft departures performed.

(28) *520 Revenue aircraft departures scheduled*. The number of revenue aircraft departures scheduled, whether or not actually performed.

(29) *610 Revenue aircraft hours (airborne)*. The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(30) *630 Aircraft hours (ramp-to-ramp)*. The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as 'block' and 'block-to-block' aircraft hours.

(31) *650 Total aircraft hours (airborne)*. The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(f) Public availability of Schedule T-100 data. Detailed domestic on-flight market and nonstop segment data in Schedule T-100, except military data, shall be publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

Appendix to Sec. 298.61--Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Schedule T-100

(a) Format of reports.

(1) *Automatic Data Processing (ADP) magnetic tape*. Refer to paragraph (f) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue "Accounting and Reporting Directives" to make necessary technical changes to these T-100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) Microcomputer diskette.

(i) *Optional specification*. If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply.

(ii) *Reporting medium*. Microcomputer ADP data submission of T-100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director--Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (k) of this appendix for microcomputer record layouts.

(iii) *Microcomputer file characteristics*. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks ("") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(b)-(c) [Reserved]

(d) *Filing date for reports*. The reports must be received at BTS within 30 days following the end of each reporting period.

(e) *Address for filing*. Data Administration Division, K-14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

(f) ADP format for magnetic tape.

(1) *Magnetic tape specifications*. IBM compatible 9 track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

- (i) Volume label.
- (ii) Header label.
- (iii) Data records.
- (iv) Trailer label.

(g) External tape label information.

- (1) Carrier name.
- (2) Report date.
- (3) File identification.
- (4) Carrier address for return of tape reel.

(h) *Standards*. It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(i) Volume, header, and trailer label formats.

(1) *Use standard IBM label formats*. The file identifier field of the header labels should be "T-100.SYSTEM".

(2) [Reserved]

(j) Magnetic tape record layouts for T-100.

(1) Nonstop segment record layout

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2-6	5T	Carrier entity code.
3	7-12	6T	Report date (YYYYMM).
4	13-15	3T	Origin airport code.
5	16-18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20-23	4T	Aircraft type code.
8	24-28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29-38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39-45	7N	Available seats (F, L, N310)
11	46-52	7N	Passengers transported (F, L, N130).
12	53-62	10N	Revenue freight transported (F, G, L, N, P, R237) (in lbs).
13	63-72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73-77	5N	Revenue aircraft departures scheduled (F, G520).
15	78-87	10N	Revenue hours, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88-97	10N	Revenue hours, airborne (F, G, L, N, P, R610) (in minutes).

T = Text.

N = Numeric.

(1) On-flight market record layout.

Field No.	Positions	Mode	Description
1	1	1T	Record type code (M = on-flight market record).

2	2-6	5T	Carrier entity code.
3	7-12	6T	Report date (YYYYMM).
4	13-15	3T	Origin airport code.
5	16-18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20-26	7N	Total passengers in market (F, L, N110).
8	27-36	10N	Revenue freight in market (F, G, L, N, P, R217) (in lbs).
9	37-46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

(k) Record layouts for microcomputer diskettes. The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) File characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements), which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisks files in this format.

(2) File naming conventions for diskettes. For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions shall be followed:

- (i) Record type S = SEGMENT.DAT
- (ii) Record type M = MARKET.DAT

[Doc. No. OST 98-4043, 67 FR 49231, July 30, 2002]

Sec. 298.62 Reporting of financial data.

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

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

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

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

(2) Line 2 "Total Operating Expenses" shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation services. This category shall include expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of

property and equipment used in the performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services shall not be included in this category.

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

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

(d) Data reported on this schedule shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

[ER-1399, 50 FR 20, Jan. 2, 1985, as amended by 53 FR 48528, Dec. 1, 1988; 60 FR 43528, Aug. 22, 1995; 60 FR 66726, Dec. 26, 1995; 67 FR 49234, July 30, 2002]

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

(a) Each small certificated air carrier shall file BTS Form 298-C, Schedule F-2 "Report of Aircraft Operating Expenses and Related Statistics." This schedule shall be filed quarterly as prescribed in Sec. 298.60. Data reported on this report shall be for the overall or system operations of the air carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Line 17 "Total Gallons of Fuel Issued" shall include the gallons of fuel used in flight operations related to fuel cost reported in total and by aircraft type on Line 4.

[ER-1399, 50 FR 20, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995; 67 FR 49234, July 30, 2002]

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

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

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

(1) Unusual circumstances warrant such a departure;

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

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

[ER-1399, 50 FR 21, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995]

Sec. 298.66 Reporting exemption for State collection of data.

(a) The Office of Airline Information may exempt a commuter air carrier from the reporting requirements of Sec. 298.61 of this part if a State government collects the information specified in that section and provides it to the Department by the dates specified. The data provided to the Department in this manner must be at least as reliable as if they were collected by the Department directly.

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

[ER-1399, 50 FR 21, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995]

SUBPART G—PUBLIC DISCLOSURE OF DATA

Sec. 298.70 Public disclosure of data.

(a) Detailed domestic on-flight market data and nonstop segment data except military data shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T-100 and Schedule T-100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail.

(c) Schedule F-1 "Report of Financial Data" shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

(d) The Department may release nonstop segment and on-flight market detail data by carrier or individual Schedule F-1 "Report of Financial Data" before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country.

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by an Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the

disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility.

(3) To agencies or other components of the U.S. Government for their internal use only.

[Doc. No. OST 98-4043, 67 FR 49234, July 30, 2002]

SUBPART H--VIOLATIONS

Sec. 298.80 Enforcement.

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the

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

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended at 60 FR 43528, Aug. 22, 1995]

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§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 of service; and other operations that the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the Department to officially notice;

(ii) Affidavits, or statements under penalty of 18 U.S.C. 1001, establishing any other facts the applicant wants the Department to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 41101 or 41301 of the Statute (except exemptions under section 40109(g)) shall state whether the authority sought is governed by a bilateral agreement or by principles of comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been established by the Department and cite the pertinent finding. If the fact of reciprocity has not been established by the Department, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 40109(g) of the Statute shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 41102 of the Statute;

(2) All possible efforts have been made to accommodate the traffic by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid unreasonable hardship for the traffic in the market that cannot be accommodated by air carriers; and

(4) In any case where an inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an unreasonable advantage to any party in the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption or other limited authority under this subpart that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by §302.304.

§302.304 Service of documents.

(a) *General requirements.* (1) An application for exemption and responsive pleadings shall be served as provided by §302.7.

(2) Applicants shall serve on the persons listed in paragraph (b) of this section a complete copy of the application and any supporting documents. Responsive pleadings shall be served on the same persons as applications.

(b) *Persons to be served.* (1) Applicants for scheduled interstate air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the city-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41305 or 40109 of the Statute.

(2) Applicants for scheduled foreign air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute. However, applicants that file fewer than sixteen (16) days prior to the proposed start of service must also serve:

(i) Those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and

(ii) Those persons who may be presumed to have an interest in the subject matter of the application.

(4) Applicants for slot exemptions under section 41714 of the Statute shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the airport(s) specified in the application,

(ii) The manager of each of the affected airports,

(iii) The mayor of the city that each affected airport serves,

(iv) The Governor of the State in which each affected airport is located, and

(v) Any other person who has filed a pleading in a related proceeding under section 41714 of the Statute.

(5) *Additional service.* The Department may, in its discretion, order additional service upon any other person.

§302.305 Posting of applications.

A copy of every docketed application for exemption shall be posted in Department of Transportation Dockets and listed in the Department's Weekly List of Applications Filed. A copy of every undocketed application shall be posted in the Licensing Division's lobby of the Office of International Aviation.

§302.306 Dismissal or rejection of incomplete applications.

(a) *Dismissal or rejection.* The Department may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) *Additional data.* The Department may require the filing of additional data with respect to any application for exemption, answer, or reply.

§302.307 Answers to applications.

Within fifteen (15) days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the Department is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

§302.308 Replies to answers.

Within seven (7) days after the last day for filing an answer, any interested party may file a reply to one or more answers.

§302.309 Requests for hearing.

The Department will not normally conduct oral evidentiary hearings concerning applications for exemption. However, the Department may, in its discretion, order such a hearing on an application. Any applicant, or any person opposing an application, may request an oral evidentiary hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the Department orders an oral evidentiary hearing, the procedures in subpart A of this part shall apply.

§302.310 Exemptions on the Department's initiative.

The Department may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

§302.311 Emergency exemptions.

(a) *Shortened procedures.* When required by the circumstances and consistent with the public interest, the Department may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the Department may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b) (1) *Applications.* Applications for emergency exemption need not conform to the requirements of this subpart or of subpart A of this part (except as provided in this section and in §302.303(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the

exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The Department may require additional information from any applicant before acting on an application.

(2) *Oral requests.* The Department will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three (3) business days of the original request.

(c) *Notice.* Except when the Department decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in §302.304(b) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the Department.

SUBPART D--RULES APPLICABLE TO ENFORCEMENT PROCEEDINGS

§302.401 Applicability.

This subpart contains the specific rules that apply to Department proceedings to enforce the provisions of Subtitle VII of the Statute, and the rules, regulations, orders and other requirements issued by the Department, as well as the filing of informal and formal complaints. Except as modified by this subpart, the provisions of subpart A of this part apply.

§302.402 Definitions.

Assistant General Counsel, when used in this subpart, refers to the Assistant General Counsel for Aviation Enforcement and Proceedings.

Complainant refers to the person filing a complaint.

Parties, when used in this subpart, include the Office of the Assistant General Counsel, the respondent, the complainant, and any other person permitted to intervene under §302.20.

Respondent refers to the person against whom a complaint is filed.

§302.403 Informal Complaints.

Any person may submit in writing to the Assistant General Counsel an informal complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Statute or any requirement established thereunder. Such informal complaints need not otherwise comply with the provisions of this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of an enforcement proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§302.404 Formal complaints.

(a) *Filing.* Any person may make a formal complaint to the Assistant General Counsel about any violation of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of §302.3 and §302.4, concerning the form and filing of documents. The filing of a complaint shall result in the institution of an enforcement proceeding only if the Assistant General Counsel issues a notice instituting such a proceeding as to all or part of the complaint under §302.406(a) or the Deputy General Counsel does so under §302.406(c).

(b) *Amendment.* A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under §302.11.

(c) *Insufficiency of formal complaint.* In any case where the Assistant General Counsel is of the opinion that a complaint does not sufficiently set forth matters required by any applicable rule, regulation or order of the Department, or is otherwise insufficient, he or she may advise the complainant of the deficiency and require that any additional information be supplied by amendment.

(d) *Joinder of complaints or complainants.* Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The Assistant General Counsel may separate or split complaints if he or she finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of the Department's business or the ends of justice.

(e) *Service.* A formal complaint, and any amendments thereto, shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel.

§302.405 Responsive documents.

(a) *Answers.* Within fifteen (15) days after the date of service of a formal complaint, each respondent shall file an answer in conformance with and subject to the requirements of §302.408(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for good cause shown.

(b) *Offers to satisfy.* A respondent in a formal complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(c) *Motions to dismiss.* Motions to dismiss a formal complaint shall not be filed prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§302.406 Procedure for responding to formal complaints.

(a) Within a reasonable time after an answer to a formal complaint is filed, the Assistant General Counsel shall either:

(1) Issue a notice instituting a formal enforcement proceeding in accordance with §302.407 or

(2) Issue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) An order dismissing a complaint issued pursuant to paragraph (a)(2) of this section shall become effective as a final order of the Department thirty (30) days after service thereof.

(c) Whenever the Assistant General Counsel has failed to act on a formal complaint within a reasonable time after an answer is due, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute an enforcement proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(d) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§302.407 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel there are reasonable grounds to believe that any economic regulatory provision of the Statute, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that efforts to satisfy a complaint as provided by §302.405 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel may issue a notice instituting an enforcement proceeding before an administrative law judge.

(b) The notice shall incorporate by reference the formal complaint submitted pursuant to §302.404 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant.

(c) The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures that it may deem necessary or proper.

(d) Whenever the Assistant General Counsel seeks an assessment of civil penalties in an enforcement proceeding, he or she shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting a formal enforcement proceeding or in a separate document.

(e) In any proceeding in which civil penalties are sought, any decisions issued by the Department shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

§302.408 Answers and replies.

(a) Within fifteen (15) days after the date of service of a notice issued pursuant to §302.407, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with §302.405. Any requests for extension of time for filing of an answer to such complaint shall be filed in accordance with §302.11.

(b) All answers shall be served in accordance with §302.7 and shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the respondent is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted. Any answer to a complaint, or response to a notice, proposing the assessment of civil penalties shall specifically present any matters that the respondent intends to rely upon in opposition to, or in mitigation of, such civil penalties.

(c) The DOT decisionmaker or the administrative law judge may, in his or her discretion, require or permit the filing of a reply in appropriate cases; otherwise, no reply may be filed.

§302.409 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by §302.408 shall be deemed to authorize the DOT decisionmaker or administrative law judge, as a matter of discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting a formal enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, as a matter of discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order; *Provided*, that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§302.410 Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge may, upon his or her own initiative, or upon motion of any party, consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings that involve substantially the same parties or issues that are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§302.411 Motions to dismiss and for summary judgment.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within seven (7) days after service of the motion.

(b) Parties may petition the DOT decisionmaker to review any action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in §302.32.

§302.412 Admissions as to facts and documents.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or administrative law judge and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant

documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters.

(c) Service of such request and answering statement shall be made as provided in §302.7. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

§302.413 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the Statute or any requirement thereunder found by the Department or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§302.414 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with §302.22.

§302.415 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge shall give the parties reasonable written notice of the time and place of the hearings. Except as may be modified by the provisions of this subpart, the procedures in §302.17 to §302.38 governing the conduct of oral evidentiary hearings will apply.

§302.416 Appearances by persons not parties.

With consent of the administrative law judge, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with the consent of the administrative law judge, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be asked witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§302.417 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision is issued by the DOT decisionmaker. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge

for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within ten (10) days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§302.418 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by, the DOT decisionmaker. Proceedings on the motion shall be in accordance with §302.11. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§302.419 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding, in which an order of the Department has been issued pursuant to section 46101 of the Statute or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 46106 of the Statute, believes that changed conditions of fact or law or the public interest require that said order or judicial action be modified or set aside, in whole or in part, such party may file with the Department a motion requesting that the Department take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. The Department shall dispose of the motion by such procedure as it deems appropriate.

§302.420 Saving Clause.

Repeal, revision or amendment of any of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

SUBPART E--RULES APPLICABLE TO PROCEEDINGS WITH RESPECT TO RATES, FARES AND CHARGES FOR FOREIGN AIR TRANSPORTATION

§302.501 Applicability.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation under Chapter 415 of the Statute. Except as modified by this subpart, the provisions of subpart A apply.

§302.502 Institution of proceedings.

A proceeding to determine the lawfulness of rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by the Department.

§302.503 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the air carrier against whose tariff provision the petition or complaint is filed.

(c) Answers to complaints, other than those filed under §302.506, shall be filed within seven (7) working days after the complaint is filed.

§302.504 Dismissal of petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts that warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§302.505 Order of investigation.

The Department, on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the foreign air transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and may assign the proceeding for hearing before an administrative law judge. If a hearing is held, except as modified by this subpart, the provisions of §302.17 through §302.38 of this part shall apply.

§302.506 Complaints requesting suspension of tariffs; answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 41509 of the Statute shall fully identify the tariff and include reference to:

- (1) The issued or posting date,
- (2) The effective date,
- (3) The name of the publishing carrier or agent,
- (4) The Department number, and
- (5) Specific items or particular provisions protested or complained against.

The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 41509 of the Statute, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by the complainant, and within the time limits herein provided, a complaint may be sent by facsimile, telegram, or electronic mail (when available) to the Department and to the carrier against whose tariff provision the complaint is made. Such complaint shall state the grounds relied upon, and must be confirmed in writing within three (3) business days and filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§302.507 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to §302.506, with respect to tariffs that do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Department, in which event the period for filing shall be extended to the next successive day that is not a Saturday, Sunday, or holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by §302.8.

SUBPART F--RULES APPLICABLE TO PROCEEDINGS CONCERNING AIRPORT FEES

§302.601 Applicability.

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers ("carriers"), pursuant to 49 U.S.C. 47129(a), for a determination of the reasonableness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination. An airport owner or operator is considered to have imposed a fee on a carrier when it has taken all steps necessary under its procedures to establish the fee, whether or not the fee is being collected or carriers are currently required to pay it.

(b) This subpart does not apply to—

(1) A fee imposed pursuant to a written agreement with a carrier using the facilities of an airport;

(2) A fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994, or

(3) Any other existing fee not in dispute as of August 23, 1994.

(c) Except as modified by this subpart, the provisions of subpart A of this part apply.

§302.602 Complaint by a carrier; request for determination by an airport owner or operator.

(a) Any carrier may file a complaint with the Secretary for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport. Any airport owner or operator may also request such a determination with respect to a fee it has imposed on one or more carriers. The complaint or request for determination shall conform to the requirements of this subpart and §§302.3 and 302.4 concerning the form and filing of documents.

(b) If a carrier has previously filed a complaint with respect to the same airport fee or fees, any complaint by another carrier and any airport request for determination shall be filed no later than seven (7) calendar days following the initial complaint. In addition, all complaints or requests for determination must be

filed on or before the sixtieth (60th) day after the carrier receives written notice of the imposition of the new fee or the imposition of the increase in the fee.

(c) To ensure an orderly disposition of the matter, all complaints and any request for determination filed with respect to the same airport fee or fees will be considered in a consolidated proceeding, as provided in §§ 302.606.

§302.603 Contents of complaint or request for determination.

(a) The complaint or request for determination shall set forth the entire grounds for requesting a determination of the reasonableness of the airport fee. The complaint or request shall include a copy of the airport owner or operator's written notice to the carrier of the imposition of the fee, a statement of position with a brief, and all supporting testimony and exhibits on which the filing party intends to rely. In lieu of submitting duplicative exhibits or testimony, the filing party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(b) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. The disk submission must be in one of the following formats, in the latest two versions, or in such other format as may be specified by notice in the Federal Register: Microsoft Word (or RTF), Word Perfect, Ami Pro, Microsoft Excel, Lotus 123, Quattro Pro, or ASCII tab-delineated files. Parties should submit three copies of each diskette to Department of Transportation Dockets: one copy for the docket, one copy for the Office of Hearings, and one copy for the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(c) When a carrier files a complaint, it must also certify:

(1) That it has served on the airport owner or operator and all other carriers serving the airport the complaint, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the complaint is filed. Such service shall be by hand, by electronic transmission, or by overnight express delivery. (Unless a carrier has informed the complaining carrier that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) That the carrier has previously attempted to resolve the dispute directly with the airport owner or operator;

(3) That when there is information on which the carrier intends to rely that is not included with the brief, exhibits, or testimony, the information has been omitted because the airport owner or operator has not made that information available to the carrier. The certification shall specify the date and form of the carrier's request for information from the airport owner or operator; and

(4) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

(d) When an airport owner or operator files a request for determination, it must also certify:

(1) That it has served on all carriers serving the airport the request, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the request is filed. Such service shall be in the same manner as provided in §302.603(c)(1).

- (2) That the airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and
- (3) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§302.604 Answers to a complaint or request for determination.

(a)(1) When a carrier files a complaint under this subpart, the owner or operator of the airport and any other carrier serving the airport may file an answer to the complaint as provided in paragraphs (b) and (c) of this section.

(2) When the owner or operator of an airport files a request for determination of the reasonableness of a fee it has imposed, any carrier serving the airport may file an answer to the request.

(b) The answer to a complaint or request for determination shall set forth the answering party's entire response. When one or more additional complaints or a request for determination has been filed pursuant to §302.602(b) with respect to the same airport's fee or fees, the answer shall set forth the answering party's entire response to all complaints and any such request for determination. The answer shall include a statement of position with a brief and any supporting testimony and exhibits on which the answering party intends to rely. In lieu of submitting duplicative exhibits or testimony, the answering party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) Answers to a complaint shall be filed no later than fourteen (14) calendar days after the filing date of the first complaint with respect to the fee or fees in dispute at a particular airport. Answers to a request for determination shall be filed no later than fourteen (14) calendar days after the filing date of the request.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in §302.603(b).

(e) The answering party must also certify that:

(1) it has served the answer, brief, and all supporting testimony and exhibits by hand, by electronic transmission, or by overnight express delivery on the carrier filing the complaint or the airport owner or operator requesting the determination, and that those parties have received or will receive these documents no later than the date the answer is filed; and

(2) that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§302.605 Replies.

(a) The carrier submitting a complaint may file a reply to any or all of the answers to the complaint. The airport owner or operator submitting a request for determination may file a reply to any or all of the answers to the request for determination.

(b) The reply shall be limited to new matters raised in the answers. It shall constitute the replying party's entire response to the answers. It shall be in the form of a reply brief and may include supporting testimony and exhibits responsive to new matters raised in the answers. In lieu of submitting duplicative exhibits or testimony, the replying party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) The reply shall be filed no later than two (2) calendar days after answers are filed.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in §302.603(b).

(e) The carrier or airport owner or operator submitting the reply must certify that it has served the reply and all supporting testimony and exhibits on the party or parties submitting the answer to which the reply is directed, and that those parties have received or will receive these documents no later than the date the reply is filed, and that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§302.606 Review of complaints or requests for determination.

(a) Within thirty (30) days after a complaint or request for determination is filed under this subpart, the Secretary will determine whether the complaint or request meets the procedural requirements of this subpart and whether a significant dispute exists, and take appropriate action pursuant to paragraph (b), (c), or (d) of this section. When both a complaint and a request for determination have been filed with respect to the same airport fee or fees, the Secretary will issue a determination as to whether the complaint, the request, or both meet the procedural requirements of this subpart and whether a significant dispute exists within thirty (30) days after the complaint is filed.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint or request for hearing before an administrative law judge. The instituting order will--

(1) Establish the scope of the issues to be considered and the procedures to be employed;

(2) Indicate the parties to participate in the hearing;

(3) Consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute; and

(4) Include any special provisions for exchange or disclosure of information by the parties.

(c) If the Secretary determines that the complaint or request does not meet the procedural requirements of this subpart, the complaint or request for determination will be dismissed without prejudice to filing a new complaint. The order of the Secretary will set forth the terms and conditions under which a revised complaint or request may be filed.

(d) If the Secretary finds that no significant dispute exists--

(1) If the proceeding was instituted by a complaint, the Secretary will issue an order dismissing the complaint, which will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(2) If the proceeding was instituted by a request for determination, the Secretary will either issue a final order as provided in §302.610 or set forth the schedule for any additional procedures required to complete the proceeding.

§302.607 Decision by administrative law judge.

The administrative law judge shall issue a decision recommending a disposition of a complaint or request for determination within sixty (60) days after the date of the instituting order, unless a shorter period is specified by the Secretary.

§302.608 Petitions for discretionary review.

(a) Within five (5) calendar days after service of a decision by an administrative law judge, any party may file with the Secretary a petition for discretionary review of the administrative law judge's decision.

(b) Petitions for discretionary review shall comply with §302.32(a). The petitioner must also certify that it has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding and that those parties have received or will receive the petition no later than the date it is filed.

(c) Any party may file an answer in support of or in opposition to any petition for discretionary review. The answer shall be filed within four (4) calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in §302.32(b).

§302.609 Completion of proceedings.

(a) When a complaint or a request for determination with respect to an airport fee or fees has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint or request is filed.

(b) When both a complaint and a request for determination have been filed with respect to the same airport fee or fees and have not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

§302.610 Final order.

(a) When a complaint or request for determination stands submitted to the Secretary for final decision on the merits, he or she may dispose of the issues presented by entering an appropriate order, which will include a statement of the reasons for his or her findings and conclusions. Such an order shall be deemed a final order of the Secretary.

(b) The final order of the Secretary shall include, where necessary, directions regarding an appropriate refund or credit of the fee increase or newly established fee which is the subject of the complaint or request for determination.

(c) If the Secretary has not issued a final order within 120 days after the filing of a complaint by an air carrier or foreign air carrier, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

SUBPART G—RULES APPLICABLE TO MAIL RATE PROCEEDINGS AND MAIL CONTRACTS

§302.701 Applicability.

(a) This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department for foreign air transportation and air transportation between points in Alaska, and certain contractual arrangements between the U.S. Postal Service and certificated air carriers for the carriage of mail in foreign air transportation entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772.

(b) Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than five (5) percent, based on weight, of the international mail transported under any such contract may consist of letter mail.

FINAL MAIL RATE PROCEEDINGS

§302.702 Institution of proceedings.

(a) Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the U.S. Postal Service, or upon the issuance of an order by the DOT decisionmaker.

(b) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rates, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(c) In any case where an air carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the DOT decisionmaker, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(d) All petitions, amended petitions, and documents relating thereto shall be served upon the U.S. Postal Service by sending a copy to the Assistant General Counsel, Transportation Division, Washington, DC 20260-1124, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the U.S. Postal Service shall consist of a statement in the document that the person filing it has served a copy as required by this section.

(e) Answers to petitions shall be filed within twenty (20) days after service of the petition.

§302.703 Order to show cause or instituting a hearing.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT decisionmaker may issue an order directing the respondent to show cause why it should not adopt such findings and conclusions and such final rates as may be specified in the order to show cause, or may issue an order setting the matter for hearing before an administrative law judge.

§302.704 Objections and answers to order to show cause.

(a) Where an order to show cause is issued, any person having objections to the rates specified in such order shall file with the DOT decisionmaker an answer within forty-five (45) days after the date of service of such order or within such other period as the order may specify.

(b) An answer to an order to show cause shall contain specific objections, and shall set forth the findings and conclusions, the rates, and the supporting exhibits that would be substituted for the corresponding items in the findings and conclusions of the show cause order, if such objections were found valid.

(c) An answer filed by a person who is neither a party nor a person ultimately permitted to intervene in an oral evidentiary hearing if such proceeding is established shall be treated as a memorandum filed under §302.706.

§302.705 Further procedures.

(a) If no answer is filed within the designated time, or if a timely filed answer raises no material issue of fact, the DOT decisionmaker may, upon the basis of the record in the proceeding, enter a final order fixing the rate or rates.

(b) If an answer raising a material issue of fact is filed within the time designated in the Department's order, the DOT decisionmaker may then issue an order authorizing additional pleadings and/or establishing further procedural steps, including setting the matter for oral evidentiary hearing before an administrative law judge.

§302.706 Hearing.

(a) If a hearing is ordered under §302.705, the issues at such hearing shall be formulated in accordance with the instituting order, except that at a prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to make a full determination of a fair and reasonable rate.

(b) (1) The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the U.S. Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom the DOT decisionmaker or administrative law judge permits to intervene in accordance with §302.20.

(2) In addition to participation in hearings in accordance with §302.19, persons other than parties may, within the time fixed for filing an answer to an order to show cause as provided in §302.704, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

(c) All direct evidence shall be in writing and shall be filed in exhibit form within the times specified by the DOT decisionmaker or by the administrative law judge.

(d) Except as modified by this subpart, the provisions of §302.17 through §302.38 of this part shall apply.

PROVISION FOR TEMPORARY RATE

§302.707 Procedure for fixing temporary mail rates.

At any time during the pendency of a proceeding for the determination of final mail rates, the DOT decisionmaker, upon his or her own initiative, or on petition by the air carrier whose rates are in issue or by the U.S. Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

INFORMAL MAIL RATE CONFERENCE PROCEDURE

§302.708 Invocation of procedure.

(a) Conferences between DOT employees, representatives of air carriers, the U.S. Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

(b) At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conference shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

§302.709 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers they have in the processing of rate cases not involving a rate conference. The employees' function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with

recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employees' analyses and recommendations.

§302.710 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the U.S. Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deem his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§302.711 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for ninety (90) days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust;

(2) Shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the DOT decisionmaker; and

(3) Shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. (The term "information", as used in this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference.)

(b) *Signed statement required.* Every representative of an air carrier actually present at any conference shall sign a statement that he or she has read this entire instruction and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed above. Every representative of the U.S. Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any air carrier that has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential, every participant, as defined in paragraph (e) of this section, shall file a verified compliance report with

Department of Transportation Dockets stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include:

(1) Any representative of any air carrier and any representative of the U.S. Postal Service actually present at the conference;

(2) The directors and the officers of any air carrier that had a representative at the conference;

(3) The members of any firm of attorneys or consultants that had a representative at the conference; and

(4) The members of the U.S. Postal Service staff who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.

§302.712 Information to be requested from an air carrier.

When an air carrier is requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment that will be required to perform the operations for a future period, full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the air carrier's experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the air carrier shall be certified by a responsible officer.

§302.713 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the air carrier a statement of exceptions showing areas of differences. Where practicable, the air carrier may submit an answer to these exceptions. Conferences will then be scheduled to resolve the issues and facts in accordance with sound ratemaking principles.

§302.714 Availability of data to the U.S. Postal Service.

The representatives of the U.S. Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the air carrier, and a reasonable time shall be allowed to review the facts and issues and to make any presentation deemed necessary; *Provided*, That in cases other than those involving an issue as to the service mail rates payable by the U.S. Postal Service pursuant to section 41901 of the Statute, representatives of the U.S. Postal Service shall be furnished with copies of data under this provision only upon their written request.

§302.715 Post-conference procedure.

No briefs, argument, or any formal steps will be entertained by the DOT decisionmaker after the rate conferences. The form, content and time of the staff's presentation to the DOT decisionmaker are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The DOT decisionmaker will grant such requests whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall

not, however, impair the rights that any party might otherwise have under the Statute and this part.

§302.716 Effect of conference agreements.

No agreements or understandings reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that a rate conference was held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that, upon the filing of an answer by any party to the rate proceeding, all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with §302.22.

§302.717 Waiver of participant conditions.

After the termination of a mail rate conference hereunder, the air carrier whose rates were in issue may petition the DOT decisionmaker for a release from the obligations imposed upon it and all other persons by §302.711. The DOT decisionmaker will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the DOT decisionmaker will grant or deny the request without being required to assign reasons therefor.

PROCESSING CONTRACTS FOR THE CARRIAGE OF MAIL IN FOREIGN AIR TRANSPORTATION

§302.718 Filing.

Any air carrier that is a party to a contract to which this subpart is applicable shall file three (3) copies of the contract in the Office of Aviation Analysis, X-50, Department of Transportation, Washington, DC 20590, not later than ninety (90) days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in §302.720 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the secretary or other duly authorized officer of the filing air carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§302.719 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent, estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§302.720 Service.

A copy of each contract filed pursuant to §302.718, and a copy of all material and data filed pursuant to §302.719, shall be served upon each of the following persons:

(a) Each certificated and commuter (as defined in §298.2 of this chapter) air carrier, other than the contracting carrier, that is actually providing scheduled mail services between any pair of points between which mail is to be transported pursuant to the contract; and

(b) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, DC 20260-1124.

§302.721 Complaints.

Within fifteen (15) days of the filing of a contract, any interested person may file with the Office of Aviation Analysis, X-50, Department of Transportation, Washington, DC 20590, a complaint with respect to the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to §302.720.

§302.722 Answers to complaints.

Answers to the complaint may be filed within ten (10) days of the filing of the complaint, with service being made as provided in §302.720.

§302.723 Further procedures.

(a) In any case where a complaint is filed, the DOT decisionmaker shall issue an order dismissing the complaint, disapproving the contract, or taking such other action as may be appropriate. Any such order shall be issued not later than ten (10) days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the DOT decisionmaker may issue a letter of notification to all persons upon whom the contract was served indicating that the Department does not intend to disapprove the contract.

(c) Unless the DOT decisionmaker disapproves the contract not later than ten (10) days prior to its effective date, the contract automatically becomes effective.

§302.724 Petitions for reconsideration.

Except in the case of a Department determination to disapprove a contract, no petitions for reconsideration of any Department determination pursuant to this subpart shall be entertained.

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