

may be, to compel compliance with civil penalties which have been imposed.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

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APPENDIX A TO PART 302—INDEX TO RULES OF PRACTICE

AUTHORITY: 5 U.S.C. 551 *et seq.*, 49 U.S.C. 40101 *et seq.*

SOURCE: Docket No. 82, 50 FR 2384, Jan. 16, 1985, unless otherwise noted.

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

(a) *Applicability.* This part governs the conduct of all economic proceedings before DOT whether instituted by order of DOT or by the filing with DOT of an application, complaint, petition, or a section 412 contract or agreement. This part also contains delegations to administrative law judges and to the DOT decisionmaker of DOT's function to render the agency decision in certain cases. The decision of administrative law judges is subject

to review by the DOT decisionmaker, pursuant to authority delegated by the Secretary. Decisions of the DOT decisionmaker are subject to review at the discretion of the Assistant Secretary for Aviation and International Affairs. In appropriate cases, the Secretary may exercise the discretionary review authority. The provisions of part 263 of this chapter of the Economic Regulations are applicable to participation of air carrier associations in proceedings under this part. Proceedings involving "Alaskan air carriers" are governed by the rules in this part, except as modified by part 292 of this chapter.

(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 the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT relating to the proceeding.<sup>1</sup> 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.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt. 1-261, 59 FR 10061, Mar. 3, 1994]

**§ 302.2 Reference to part and method of citing rules.**

This part shall be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule". The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "302.8 *Service of documents*", shall be referred to as "Rule 8". Paragraph (a)(2) of that

<sup>1</sup>The Federal Aviation Act of 1958 may be found at 72 Stat. 731, and at 49 U.S.C. 1301 *et seq.* The Department's substantive rules may be found in its Economic Regulations and Special Regulations (Subchapters A and D of this chapter, respectively).

rule, relating to service documents by the parties, shall be referred to as “Rule 8 (a)(2)”.

**Subpart A—Rules of General Applicability**

**§ 302.3 Filing of documents.**

(a) *Filing address, date of filing, hours.* Documents required by any section of this part to be filed with DOT shall be filed with the Documentary Services Division of DOT, Washington, DC 20590.

Such documents shall be deemed to be filed on the date on which they are actually received by DOT. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

(b) *Formal specifications of documents.*  
 (1) Documents filed under this part must be on white paper not larger than 8½ by 11 inches, including any tables, charts and other documents that may be included. Ink must be dark enough (but may not be green) 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 1½ 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 302.31 contains additional requirements as to the contents and style of briefs.

(2) To facilitate indexing, a filer should include in or provide with each document: the docket title and subject; the relevant operating administration before which the application or request is filed; the identity of the filer; the

title of the specific action being requested; and the name and address of the designated agent, and so identified, on file for official service. The Docket Management Facility has an Expedited Processing Sheet that filers can use to assist in this index input.

(3) *Reproduction of documents.* Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall 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 the Docket Management Facility. 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 the signature.

Airport Fees .....	9 copies
Agreements	
International Air Transport Association (IATA) .....	6 copies
Other (under 49 USC 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 (49 USC 41310) .....	7 copies
Employee Protection Program (14 CFR 314) .....	7 copies
Exemptions	
Computer Reservation Systems (14 CFR 255) .....	8 copies
Other (under 49 USC 40109) .....	7 copies
Tariffs (under 49 U.S.C. Chapter 415 or 14 CFR 221) .....	5 copies
Foreign Air Carrier Permits/Exemptions .....	7 copies
International Authority for U.S. Air Carriers (certificates, exemptions, allocation of limited frequencies 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 Levels .....	6 copies
U.S. Air Carrier Certificates (involving Initial or Continuing Fitness) .....	6 copies

Other matters.....3 copies

Filers are encouraged to submit one of the required true copies (except for counterparts of Agreement CAB 18900) in electronic form on a 3½ inch floppy disk, labeled to show the filer's and representative's names, the docket number (if known) or space for it, and document title. The electronic submission must be in one of the following formats: Microsoft Word (or RTF), WordPerfect, Excel, Lotus 123, or ASCII text. The disk must be accompanied by a signed certification that it is a true copy of the executed original document.

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

(e) [Reserved]

(f) *Official docket copy.* With respect to all documents filed under this part that are scanned, the electronic scanned 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.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended at 53 FR 16701, May 11, 1988; Doc. No. OST-96-1436, 61 FR 29284, June 10, 1996]

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

(a) *Contents.* In case there is no rule, regulation, or order of DOT which 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 by § 312.12 or § 312.14 of this subchapter, such document shall, at the appropriate time, be accompanied by an Environmental Evaluation, a representation and explanation with respect to § 312.9(a)(2) of this chapter, or an Environmental assessment, in conformity with those sections or orders issued thereunder.

(b) *Subscription.* Every application, petition, complaint, motion or other

authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person; *Provided*, That, if signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person signing the document constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) *Designation of person to receive service.* The initial document filed by a person shall state on its first page the name and post office address of the person or persons who may be served with any documents filed in the proceeding. It is requested, but not required, that the telephone number of that person also be included.

(d) *Prohibition of certain documents.* No document which is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters shall be filed with DOT unless:

(1) Such document and its filing by the person submitting it has been expressly authorized or required in the Federal Aviation Act of 1958, any other law, this part, other Department regulations, or any order or other document issued by the DOT decision-maker, the chief administrative law judge or an administrative law judge assigned to the proceeding, and

(2) Such document complies with each of the requirements of §§ 302.3 and 302.8, 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 may be submitted in the form of a letter: *Provided further*, That comments concerning tariff

agreements, which have not been docketed, may be submitted in the form of a letter.<sup>2</sup>

(e) *Documents improperly filed.* A document which is filed in violation of the prohibition imposed by paragraph (d) of this section, or in violation of a requirement imposed by any other provision of this part, will not be accepted for filing by DOT and will not be physically incorporated in the docket of the proceeding. The sender of such document and all persons who have been served therewith will be notified informally of DOT's action thereon.

(f) *Motions for leave to file otherwise unauthorized documents.* (1) DOT will accept otherwise unauthorized documents for filing only if leave has previously been obtained, from the administrative law judge or the DOT decisionmaker, on written motion and for good cause shown. 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.

(2) After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, these motions shall be addressed to the administrative law judge. At all other times, such motions shall be addressed to the DOT decisionmaker. The administrative law judge or DOT decisionmaker will promptly pass upon such motions.

(3) Such motions shall be filed within seven days after service of any document or order or ruling to which the proposed filing is responsive, and shall be served on all parties to the proceeding. Answers thereto may not be filed.

(4) Such motions shall contain a concise statement of the matters relied upon as good cause and there shall be attached thereto the pleading or other document for which leave to file is sought.

<sup>2</sup>See subpart L, §302.1206 providing for the filing of comments with respect to undocketed agreements.

### §302.5 Amendment of documents and dismissal.

If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of DOT as to the contents thereof, or is otherwise insufficient but not subject to rejection under §302.4(e), DOT, on its own initiative, or on motion of any party, may strike or dismiss such document, or require its amendment. An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to its designation for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in §302.18. 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 to applications, complaints, petitions, motions or other documents or orders instituting proceedings 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. Protests or memoranda of opposition or support, permitted by statute, shall be filed in lieu of answers or shall be combined with answers.

NOTE: DOT does not grant formal intervention in nonhearing matters, such as applications for exemption under section 416(b) of the Act, and any interested person may file documents authorized under this part without first obtaining leave.

(b) Further responsive documents: Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any further responsive document is not fileable, all new matter contained in such answer shall be deemed controverted. A party to a proceeding whose application has been the subject of a protest or memorandum of opposition or support, permitted by statute, may respond thereto before the close of

the hearing in the case to which such documents relate, orally, in writing, or by introducing evidence, subject to appropriate rulings by the administrative law judge. Once such response has been made, such party may also discuss the protest or memorandum in his brief to the administrative law judge or the DOT decisionmaker or in his or her oral argument.

(c) *Time for filing.* Except as otherwise provided, an answer or any further responsive document shall be filed within seven days after service of the document to which such responsive filing is directed. Protests or memoranda of opposition or support, permitted by statute, shall be filed before the close of the hearing in the case to which they relate.

#### § 302.7 Retention of documents by DOT.

All documents filed with or presented to DOT may be retained in the files of the Documentary Services Division. However, DOT may permit the withdrawal of original documents upon the submission of properly authenticated copies to replace such documents.

#### § 302.8 Service of documents.

(a) *Who makes service*—(1) *DOT.* Formal complaints, notices, orders to show cause, other orders, and similar documents issued by DOT will be served by DOT 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 DOT shall be served by such party or other person upon all parties to the proceeding in which it is filed: *Provided,* That motions to expedite filed in any proceeding conducted pursuant to sections 401 and 402 of the Act, shall, in addition, be served on 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 tendered for filing.

(b) *How service may be made.* Service may be made by express mail, first class mail or priority mail, or by personal delivery. The means of service selected must be such as to permit com-

pliance with section 1005(c) of the Act, which provides for service of notices, processes, orders, rules, and regulations 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 under section 1005(b) of the Act, 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(c) once a proceeding has been commenced.

(d) *Where service may be made.* Personal service may be made on any of the persons described in paragraph (c) of this section wherever they may be found, except that an agent designated by an air carrier under section 1005(b) of the Act may be served only at his or her office or usual place of residence. Service by regular or registered or certified mail 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 air carrier under section 1005(b) of the Act, or at the post office address stated for a person designated to receive service pursuant to § 302.4(c).

(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) An acknowledgment of service signed by a person receiving service personally, or a certificate of the person making personal service.

(f) *Date of service.* Whenever proof of service by mail is made, the date of mailing shall be the date of service. Whenever proof of service by personal delivery is made, the date of such delivery shall be the date of service.

(g) *Freely Associated State Proceedings.* In any proceeding directly involving

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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.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt 302-72, 52 FR 5445, Feb. 23, 1987]

**§ 302.9 Parties.**

The term "party" wherever used in this part shall include any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. 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.

[Amdt. 302-72, 52 FR 5445, Feb. 23, 1987]

**§ 302.10 Substitution of parties.**

Upon motion and for good cause shown, DOT may order a substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion.

**§ 302.10a Participation of air carrier associations in Department proceedings.**

(a) An association composed entirely or in part of direct air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply only if:

(1) The issues substantially affect the property or financial interests of the association as opposed to an interest derivative from its members;

(2) The association acts as a conduit to the Department of factual information gathered from the members, as distinguished from presentation of opinions or positions on issues; or

(3) 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.

(b) Upon motion of any interest person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the ground of significant divergence of interest or position within the association.

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

**§ 302.11 Appearances; rights of witnesses.**

(a) Any party to a proceeding may appear and be heard in person or by attorney. No register of persons who may practice before DOT is maintained and no application for admission to practice is required. Any person practicing or desiring to practice before DOT may, upon hearing and good cause shown, be suspended or barred from practicing.

(b) Any person appearing in person in any proceeding governed by this part, whether in response to a subpoena or by request or permission of DOT, may be accompanied, represented and advised by counsel and may be examined by his own counsel after other questioning.

(c) 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 DOT, may retain or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him or a copy of any transcript made of his testimony.

**§ 302.12 Consolidation of proceedings.**

(a) *Initiation of consolidations.* DOT upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to

the ends of justice and will not unduly delay the proceedings. Although DOT 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 DOT will not undertake to search its docket for all applications which might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless DOT has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed 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 considerations of issues which enlarge, expand and 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 which is not filed at or prior to the prehearing conference, or within the time prescribed by the DOT decisionmaker in a particular proceeding, as the case may be, shall be dismissed unless the movant shall clearly show good cause for his or her failure to file such motion on time. A motion which does not relate to an application pending at the time of the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested, or on the date specifically prescribed by the DOT decisionmaker in a particular proceeding for filing of motions for consolidation or contemporaneous consideration, shall likewise be dismissed unless the movant shall clearly show good cause for his or her failure to file the application within the prescribed period.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with DOT, 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.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act (5 U.S.C. 551 *et seq.*))

#### **§ 302.13 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 DOT decisionmaker he or she may separate or split complaints if it finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of DOT's business or the ends of justice.

#### **§ 302.14 Participation in hearing cases by persons not parties.**

(a) *Requests for expedition.* In any case to which the DOT's principles of practice, Part 300, are applicable, any interested person, including any State, subdivision thereof, State aviation commission, or other public body, may by motion request expedition of such case or file an answer in support of or in opposition to such motions. Such motions and answers shall be served as provided in § 302.8 of this part.

(b) *Participation in hearings.* 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 which 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, or protests or memoranda in opposition or support where permitted by statute, shall be filed and served on all parties prior to the close of the hearing.

**§302.15 Formal intervention in hearing cases.**

(a) *Who may intervene.* Petitions for leave to intervene as a party will be entertained only in those cases that are to be decided upon an evidentiary record after notice and hearing. Any person who has a statutory right to be made a party to such proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to intervene. DOT does not grant formal intervention, as such, in nonhearing matters, and any interested person may file documents authorized under this part without first obtaining leave.

(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:

(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 which 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 issue or delay the proceeding.

These criteria will be liberally interpreted to facilitate the effective participation by members of the public in DOT proceedings.

(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 DOT, any petition for leave to intervene shall be filed within the following time limits:

(i) In a proceeding where DOT issues a show cause order proposing fair and reasonable mail rates, such petition shall be filed within the time specified for filing notice of objection.

(ii) In all other proceedings, including mail rate proceedings where no show cause order is issued, the petition shall be filed with DOT 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.

(iii) A petition to intervene in any Board proceeding filed by a city, other public body, or a chamber of commerce shall be filed with DOT not later than the last day prior to the beginning of the hearing thereon.

A petition for leave to intervene which 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 DOT 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.

**§ 302.16 Computation of time.**

In computing any period of time prescribed or allowed by this part, by notice, order or regulation of the DOT or DOT decisionmaker the chief administrative law judge or an administrative law judge, 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 DOT, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

**§ 302.17 Continuances and extensions of time.**

(a) *Generally.* Whenever a party has the right or is required to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker, the head of the Documenting Services Division or the administrative law judge assigned to the proceeding 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 the failure to act is clearly shown to have been the result of excusable neglect.

(b) *Procedures.* Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a)(1) or (2) 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.

**§ 302.18 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. After the assignment of an administrative law judge 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.

NOTE: This paragraph is not construed as authorizing motions in the nature of petitions for reconsideration.

(a-1) *Motions to disqualify DOT employee in review of hearing matters.* In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification within the periods hereinafter prescribed. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions shall be filed on or before the date answers are due pursuant to § 302.28. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions shall be filed on or before the date briefs are due pursuant to § 302.31 or § 302.1755, as applicable. Failure to file a timely motion shall be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee shall be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

(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 with particularity the grounds therefor 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 thereto, and rulings thereon, 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 (1) where incorporation of a motion in another document is specifically authorized by a rule or order of DOT, or (2) where a document is filed which 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 entitled and identified to indicate that it incorporates a motion, otherwise the motion will be disregarded.

(c) *Answers to motions.* Within seven 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. Unless the DOT decisionmaker or the administrative law judge provides otherwise, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any other responsive document is not fileable, all new matter contained in such answer shall be deemed controverted.

(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) *Disposition of motions.* The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if he or she finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, he or she may refer such motion to that per-

son for decision. The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision.

(f) *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 motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding irrespective of the filing of an appeal or any action taken on it.

(g) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time fixed by this part (or any extension granted thereunder) to take action.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481) Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

#### §302.19 Subpenas.

(a) An application for a subpoena requiring the attendance of a witness or the production of documentary evidence at a hearing may be made without notice by any party to the administrative law judge designated to preside at the reception of evidence or, in the event that an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge, for action by himself or herself or by the DOT decisionmaker.

(b) A subpoena for the attendance of a witness shall be issued on oral application at any time.

(c) An application for a subpoena for documentary or tangible evidence 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. 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 which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

(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. It is the purpose of this section, on the one hand, to make subpoenas readily available to parties, and, on the other hand, to prevent the improvident issuance of subpoenas to secure evidence which is unrelated to the issues of the proceeding or wholly unreasonable in its scope.

(e) Where it appears at a hearing that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge or chief administrative law judge may issue on his or her own motion 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 § 302.8(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 designated to preside at the reception of evidence or, in the event an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge for action by himself or her-

self or by the DOT decisionmaker. 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 at any time order that the return date of a subpoena which he or she has elected to review 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. Applications therefor shall be addressed to the administrative law judge in writing and shall set forth the need of the moving party for such evidence and the relevancy to the issues of the proceeding. Such applications shall be processed as motions in accordance with § 302.18 except that a grant of such motion by an administrative law judge, in whole or in part, shall be immediately reviewed by the DOT decisionmaker on his or her own initiative and shall be subject to his or her final action. No application will be required for the attendance of DOT personnel or the production of records in their custody when requested by an enforcement attorney. Where a DOT employee has testified in an enforcement proceeding that he or she used documents in his or her custody, or parts thereof, to refresh his or her recollection, a ruling by the administrative law judge for their production shall be final in the absence of an objection by the enforcement attorney. In the event of such objection, the DOT decisionmaker's review will be limited to the documents, or portions thereof, to which objection is taken by the enforcement attorney.

#### **§ 302.20 Depositions.**

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned as a hearing officer in 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, or

(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 an administrative law judge designated to preside at the reception of evidence or, in the event that a hearing officer has not been assigned to a proceeding or is not available, to the DOT decisionmaker 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 DOT decisionmaker or the administrative law judge 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, and 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 propounded 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 officer shall include argument or debate. Objections to questions or evidence shall be noted by the 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 officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the officer, or under his or her direction, after which the deposition shall be subscribed by the witness unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the officer. If the deposition is not subscribed to by the witness, the officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to the Documentary Services Division 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 only be authorized 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 stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' 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 stenographer, 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 at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

**§ 302.21 Attendance fees and mileage.**

(a) *Where tender of attendance fees and mileage is a condition of compliance with subpoena.* 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 paragraph (b) of this section: *Provided*, That a witness summoned at the instance of DOT 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 em-

ployment, need not be tendered such fees or mileage at that time.

(b) *Amount of mileage and attendance fees to be paid.* (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 fees and mileage paid to witnesses for like service in the courts of the United States, as provided in paragraphs (b)(1) (i) through (iii) of this section: *Provided*, That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 403(b) of the Act shall be entitled to any fees or mileage: *And provided further*, That the amounts hereinafter set forth for fees and mileage shall not be applicable for witnesses summoned to testify in Alaska.

(i) *Per diem for attendance.* There shall be tendered \$20 for each day of expected attendance at a hearing or place where deposition is to be taken, and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) *Allowance for subsistence.* In addition to per diem for attendance, when attendance is required at a point so far removed from the witness' residence as to prohibit daily return thereto, there shall be tendered an additional sum of \$16 per day for expenses of subsistence for each day of expected attendance and including the time necessarily occupied in going to and returning from the place of attendance.

(iii) *Mileage.* There shall be tendered an amount equal to 10 cents per mile for the round trip distance between the witness' place of residence and the place where attendance is required. Regardless of the mode of travel employed, computation of mileage shall be made on the basis of a uniform table of distances adopted by the Attorney General where the travel is covered by such table: *Provided*, That in lieu of this mileage allowance witnesses who are required to travel between the territories and possessions, or to and from the continental United States or between two foreign points shall be tendered a ticket for such transportation at the coach rate available at the time of reservation plus the required per

diem attendance fees: *And provided further*, That in Alaska where permitted by section 403(b) of the Federal Aviation Act of 1958, as amended, the witness may, at his option, accept a pass for travel by air.

(2) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, who are summoned to testify at the instance of DOT or one of its employees or the United States or one of its agencies shall be paid in accordance with the provisions of paragraph (b)(1) of this section. 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 which they are required to attend. Only persons summoned by subpoena shall be entitled to claim attendance fees, subsistence or mileage from the Government.

(3) 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.

(4) Whenever the sums tendered to a witness are inadequate for reimbursement under the requirements of this section, and such witness has complied with the summons, he or she shall upon request within a reasonable period of time be entitled to such additional sums as may be due him or her under the provisions of this section. Whenever the sums tendered and paid to a witness are excessive under the above requirements, either because the witness traveled under the free or reduced rate provisions of section 403(b) of the Act, or for any other reasons, the witness shall upon request within a reasonable period of time refund such sums as may be excessive under the provisions of this section.

**§ 302.22 Administrative law judges.**

(a) *Defined.* The term "administrative law judge" as used in this part includes presiding officers, administrative law judges, or any other DOT em-

ployee assigned to hold a hearing in a proceeding.

(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.

(c) *Powers.* An administrative law judge shall have the following powers, in addition to any others specified in this part:

- (1) To give notice concerning and to hold hearings;
- (2) To administer oaths and affirmations;
- (3) To examine witnesses;
- (4) To issue subpoenas and to take or cause depositions to be taken;
- (5) To rule upon offers of proof and to receive relevant evidence;
- (6) To regulate the course and conduct of the hearing;
- (7) To hold conferences before or during the hearing, for the settlement or simplification of issues;
- (8) To rule on motions and to dispose of procedural requests or similar matters;
- (9) To make initial or recommended decisions as provided in § 302.27;
- (10) To take any other action authorized by this part, by the Administrative Procedure Act, or by the Federal Aviation Act.

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.

(d) *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 an initial decision but shall recommend a decision to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act unless, in rulemaking or determining applications for initial licenses, the office advises him or her that it intends to issue a tentative decision.

**§ 302.22a DOT decisionmaker.**

(a) *Definition.* As used in this Subchapter, the DOT decisionmaker is the official authorized to issue final decisions of the Department.

(b) *Hearing cases assigned to the senior career official.* In hearing cases assigned to the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, that official is 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 the powers of an administrative law judge 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. A notice of review by the Assistant Secretary will establish the procedures for review. Unless a notice of review is issued, a decision of the senior career official will be issued as a final order of the Department and be served 14 days after it is adopted by the senior career official. Petitions for discretionary review of decisions of the senior career official will not be entertained.

(2) Final decisions of the senior career official may be reviewed upon a petition for reconsideration filed pursuant to § 302.37. 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 As-

sistant 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) Carrier selection proceedings for international route authority and such other hearing cases as the Secretary deems appropriate will be assigned to the senior career official.

(c) *Other hearing cases.* In other hearing cases, the Assistant Secretary for Aviation and International Affairs is the DOT decisionmaker. The Assistant Secretary shall have all the powers of an Administrative Law Judge and those additional powers delegated by the Secretary.

(d) *Nonhearing cases.* In all other proceedings, the Assistant Secretary for Aviation and International Affairs or, in consumer protection matters, the Assistant Secretary for Governmental Affairs is the DOT decisionmaker. The Assistant Secretaries may delegate this authority in appropriate cases to subordinate officials.

(e) *Secretary and Deputy Secretary.* The Secretary or Deputy Secretary may exercise the authority of the Assistant Secretary whenever he or she believes a decision involves important questions of national transportation policy.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt. 1-261, 59 FR 10061, Mar. 3, 1994]

**§ 302.23 Prehearing conference.**

(a) *Purpose and scope of conference.* Prior to any hearings there will ordinarily be a prehearing conference before an administrative law judge, although in economic enforcement proceedings where the issues are drawn by the pleadings such conference will usually be omitted. Written notice of the prehearing conference shall be sent by the chief 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 and simplify the issues and the scope of the proceeding, to secure statements of the positions of the parties with respect

thereto and amendments to the pleadings in conformity therewith, 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 which the DOT decision-maker 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, etc.

The administrative law judge may require 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 §302.19 as though at a hearing. Applications for the production prior to hearing of documents in DOT's possession shall be addressed to the administrative law judge, in accordance with the provisions of §302.19(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 motion 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.

(b) *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 which has not been met by a revision of the report if they 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.

#### §302.24 Hearing cases.

(a) *Definition.* A hearing case means any proceeding (including an enforcement case) that the Department has noticed will be conducted on the record after oral evidentiary hearing subject to 5 U.S.C. 556 and 557.

(b) *Notice.* 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.

(c) *Evidence.* Evidence presented 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 written form by all parties wherever feasible, as the administrative law judge may direct.

(d) *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 thereon except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(e) *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.

(f) *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 which 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.

(g) *Exhibits.* When written 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.

(h) *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.

(i) *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 book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenti-

cated, 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 book, paper, or document, and to offer in evidence in like manner other portions thereof.

(j) *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; and

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker; and

(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 (i) (1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the above requirement with the consent of the parties.

(k) *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.

(l) *Transcripts of hearings.* (1) Hearings shall be recorded and transcribed, under supervision of the administrative law judge, by the reporting firm under contract with DOT. Copies of the transcript shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(2) 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 DOT will pay the reporting firm the full 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:

(i) The nature of the proceeding itself;

(ii) The DOT decisionmaker's needs as well as the reasonable needs of the parties; and

(iii) The requirements of a fair hearing.

(3) 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 DOT, the reporting firm will be obligated to furnish to the DOT 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.

(4) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which DOT currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(5) Copies of transcripts ordered by parties other than DOT 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, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(m) *Corrections to transcript.* 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 the Documentary Services Division, within ten (10) days after receipt of the completed transcript by DOT. 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 stenographic 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.

(n) *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 its administrative law judges 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 B of this part. Each such category shall include any document antedating final DOT decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

1. Official Guide of the Airways for each month prior to and including April 1943; Universal Airline Schedules for each month from May 1943 to September 1944, inclusive; American Aviation Air Traffic Guide for each month from October 1944 to August 1948, inclusive; and Official Airline Guide.
2. Official Guide of the Railways and Russell's Official National Motor Coach Guide.
3. Book of Official CAB Airline Route Maps and Airport to Airport Mileages published by Air Transport Association of America.
4. Shuler Guide and Official Airline Guide Quick Reference Edition.

5. All schedules and amendments thereof, and all tariffs and amendments thereof, of all carriers, on file with DOT.

6. Air Carrier operating certificates or applications therefor, of all carriers, together with any requests for amendment thereof.

7. Monthly reports, Forms 2380 and 2780, for each month through December 1946, and monthly and quarterly reports, Forms 41 and 41(a) (including monthly and annual reports required to be filed by all carriers in connection therewith), filed with DOT.

8. Recurrent Reports of Mileage and Traffic Data of all Domestic Airline Carriers from 1945 and all similar reports issued by the Civil Aeronautics Board or DOT.

9. Certified Air Carrier Traffic Statistics from 1955, prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of statistics issued by the Civil Aeronautics Board or DOT.

10. Recurrent Reports of Financial Data of all Domestic Airline Carriers from 1947 through the quarter ended September 30, 1953; issued by the Civil Aeronautics Board, and all such other similar recurrent reports issued by the Civil Aeronautics Board or DOT.

11. Certificated Air Carrier Financial Data from the quarter ended December 31, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of data issued by the Civil Aeronautics Board or DOT.

12. Annual Airline Statistics, Domestic Carriers, fiscal years 1936-1941; Annual Airline Statistics, Domestic Carriers, calendar years 1938-1947; prepared by the Bureau of Pricing and Domestic Aviation Civil Aeronautics Board; and all such other similar compilations of statistics issued by the Civil Aeronautics Board or DOT.

13. Quarterly Report of Air Carrier Operating Factors, for the quarter ended September 30, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other reports for quarterly periods as may be made available to the public by the Civil Aeronautics Board or DOT.

14. Passenger, mail, express, and freight data submitted to the Board on Form 2787 by all carriers for any months subsequent to March 1955 and any similar data submitted to DOT.

15. Airline Traffic Surveys, compiled by the Civil Aeronautics Board, from September 1946, and any other such surveys made available to the public by the Civil Aeronautics Board or DOT.

16. The publication Competition Among Domestic Air Carriers, March 1-14, 1955, compiled by the Civil Aeronautics Board and published by the Air Transport Association of America, and any other compilations of

similar data made available to the public by the Civil Aeronautics Board or DOT.

17. Service Mail Pay and Subsidy for United States Certificated Air Carriers from 1955, published by the Civil Aeronautics Board, and any supplemental data and subsequent issues published by the Civil Aeronautics Board or DOT.

18. Airport Activity Statistics of Certificated Air Carriers, from December 31, 1955; compiled by the Civil Aeronautics Board, and published by Air Transport Association of America, and any subsequent issues thereof published by DOT.

19. Enplaned Airline Traffic, by community, by year, 1948-1951; Air Commerce Traffic Pattern, fiscal years 1953-1955 and calendar years 1952-1955, published by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereof published by the Federal Aviation Administration.

20. Population Volumes I and II of the Eighteenth (1960) Census of the United States, issued by the Census Bureau, Department of Commerce; and similar publications of the Census Bureau relating to the Seventeenth (1950) Census.

21. The Rand McNally Commercial Atlas and Marketing Guide, from 1958, and the Rand McNally Road Atlas, United States, Canada, and Mexico, from 1956.

22. Survey of Buying Power, from 1955, published by Sales Management Magazine.

23. Volumes II and III of the Census of Manufacturers, 1954, issued by the Bureau of Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1947 and 1958 Census of Manufacturers.

24. Volumes II, IV and VI of the Census of Business, 1954, issued by the Bureau of the Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1948 and 1958 Census of Business.

25. Federal Airways Air Traffic Activity, from 1953-1956 (fiscal year) issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and subsequent editions thereof issued by the Federal Aviation Administration.

26. National Airport Plan, from 1956, Civil Aeronautics Administration, U.S. Department of Commerce and subsequent editions thereof issued by the Federal Aviation Administration.

27. Record of Airport Facilities, Form ACA-29A, issued by the Civil Aeronautics Administration, U.S. Department of Commerce and by the Federal Aviation Administration.

28. International Section, Airline Traffic Surveys prepared by the Civil Aeronautics Board from March and September 1959, and any such surveys issued or otherwise made

available to the parties by the Civil Aeronautics Board or published privately.

29. The ABC World Airways Guide, Thomas Skinner and Co., Ltd., from June 1950.

30. ICAO Statistical Summary, Preliminary Issue and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by the International Civil Aviation Organization, Montreal, Canada, with all changes and additions.

31. Foreign-Commerce Yearbook, from 1951, U.S. Department of Commerce, office of International Trade.

32. Statistical Abstract of the United States, from 1953, U.S. Department of Commerce, Bureau of Census.

33. Yearbook of International Trade Statistics, from 1956.

34. Annual Reports of the Immigration and Naturalization Service, U.S. Department of Justice, from fiscal year ended June 30, 1945.

35. Official Steamship and Airways Guide International Transportation Guides, Inc., from June 1945.

36. The Airman's Guide, from 1950, issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereto, issued by the Federal Aviation Administration.

37. Plant and Product Directory of the 500 Largest U.S. Industrial Corporations, from 1961, published by Time Inc.

38. Thomas' Register of American Manufacturers, from 1955, published by Thomas Publishing Company.

39. First and Second Class Post Offices, July 1, 1939-July 1, 1946 and Receipts and Classes of Post Offices, from July 1, 1947, issued by the U.S. Post Office Department.

40. Quarterly Report on Federal Aid to Highways, from March 1960, issued by the Bureau of Public Roads of the U.S. Department of Commerce.

41. All forms and reports required by the Post Office Department to be filed by air carriers certificated to transport mail.

42. All orders of the Postmaster General designating schedules for the transportation of mail.

43. Handbook of Airline Statistics from 1961, prepared by the Bureau of Accounts and Statistics, Civil Aeronautics Board or DOT.

44. CAB Forms 242, 243, 244, and 244A (including all monthly, quarterly, semiannual, and annual reports required to be filed by carriers in connection therewith), filed with the Board or DOT.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (m)(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.

(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 (m)(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 which have been noticed.

**§ 302.25 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 of his or her own motion, or at the request of a party, permit the presentation of oral argument. He or she may impose such time limits on the argument as he or she may determine, having regard for other assignments for hearing before him or her. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the DOT decisionmaker for consideration in deciding the case.

**§ 302.26 Proposed findings and conclusions before the administrative law judge or the DOT decisionmaker.**

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 to include proposed findings and conclusions of law which shall contain exact references to the record and authorities relied upon. The provisions of this section shall be applicable to proceedings in which the

record is certified to the DOT decisionmaker without the preparation of an initial or recommended decision by the administrative law judge.

**§ 302.27 Delegation to administrative law judges and action by administrative law judges after hearing.**

(a) *Delegation of authority to make the agency decision subject to discretionary review.* Pursuant to the authority conferred on DOT under section 1601(b)(1) of the Federal Aviation Act of 1958, as amended, there is hereby delegated to each administrative law judge assigned to a particular case subject to this part 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 a recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 801 of the Act. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters which have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.18. The term "initial decision," as used in this part, shall encompass the administrative law judge's decision pursuant to this delegation of authority on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Action by administrative law judge after hearing.* (1) 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 initial decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (c) 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 proposed findings

and conclusions with the DOT decisionmaker and supporting briefs.

(2) Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of proposed findings and conclusions, if any, the administrative law judge shall take the following action:

(i) *Cases subject to section 801 of the Act.* In cases where the action of the Department is subject to the approval of the President pursuant to section 801 of the Act, the administrative law judge shall render a recommended decision orally on the record or in writing.

(ii) *Other matters.* If the proceeding relates to any matter not provided for in paragraph (b)(2)(i) of this section, the administrative law judge shall render an initial decision in writing.

(c) *Effect of initial decision.* Unless a petition for discretionary review is filed pursuant to § 302.28, exceptions are filed pursuant to § 302.1754, 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 30 days after service thereof. 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 is stayed until the further order of the DOT decisionmaker.

**§ 302.28 Petitions for discretionary review of initial decisions 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 of the sound 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 21 days after service thereof, except that the DOT decisionmaker may fix a different period in any decision involving a foreign air carrier where the action of DOT is subject to the approval of the President pursuant to section 801 of the Act. Such petitions shall be accompanied by proof of service on all parties.

(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, DOT 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 which 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 or the Chief Administrative Law Judge, petitions shall not exceed 20 pages including appendices and other papers physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answer.* Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 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 20 pages.

(c) *Orders declining review.* DOT orders 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 DOT. A pe-

tion for reconsideration of a DOT 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 DOT in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may exercise his or her right of review upon petition for review or on his or her own initiative. 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 which will:

(i) Specify the issues to which review will be limited. Such issues shall constitute one or more of the issues raised in a petition for discretionary review, and/or matters which the DOT decisionmaker desires to review on his or her own initiative. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to §302.31, and considered by the DOT decisionmaker.

(ii) Specify the portions of the administrative law judge's decision, if any, which are to be stayed as well as the effective date of the remaining portions thereof.

(iii) Designate the parties to the review proceeding.

#### § 302.29 Tentative decision of DOT.

(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 proposed findings and conclusions 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 may be filed, the time within which briefs in support of 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 (which in no event shall be less than 10 days), it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) Notwithstanding the provisions of paragraph (a) of this section, in rule making proceedings or proceedings determining applications for initial licenses, the DOT decisionmaker may omit a tentative decision in any case in which he or she finds upon the record that due and timely execution of DOT's functions imperatively and unavoidably so requires. The DOT decisionmaker may also, in his or her discretion, omit a tentative decision in proceedings under subpart Q. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.22a.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481 (Administrative Procedure Act) 5 U.S.C. 551 *et seq.*))

### § 302.30 Exceptions to tentative decisions of DOT.

(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 repetitive 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 which 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 which 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.

### § 302.31 Briefs before 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 decisions 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 § 302.28(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within 30 days after date of service of the order granting discretionary review. 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 or the administrative law judge (where the administrative law judge's decision was not made under delegated authority) 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 which the party submitting it is entitled to raise and which it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed 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.

(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 the Documentary Services Division a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length and index.* Briefs shall comply with the formal specifications set forth in § 302.3(b). Except by permission

or direction of the DOT decisionmaker, briefs shall not exceed 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. Any brief that exceeds 10 pages shall contain a subject index of its contents, including page references.

**§ 302.32 Oral argument before the DOT decisionmaker.**

(a) If any party desires to argue a case orally before the DOT decisionmaker, he shall request leave to make such argument in his 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 presented 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. All such material shall be served on all parties to the proceeding and eight copies transmitted to the Documentary Services Division at least five (5) calendar days in advance of the argument. As used herein "material" includes, but is not limited to, maps, charts included in briefs, and exhibits which are enlarged and used for demonstration purposes at the argument, but does not include the enlargements of such exhibits.

**§ 302.33 Waiver of procedural steps after hearing.**

The parties of any proceeding may agree to waive any one or more of the following procedural steps provided in

§§ 302.25 through 302.32: Oral argument before the administrative law judge, the filing of proposed findings and conclusions for the administrative law judge or for the DOT decisionmaker, a recommended decision of the administrative law judge, a tentative decision of the DOT decisionmaker, a petition for discretionary review of or exceptions to an initial decision or recommended decision, and the filing of briefs with the DOT decisionmaker, or oral argument before the DOT decisionmaker.

**§ 302.35 Shortened procedure.**

In cases where a hearing is not required by law, §§ 302.23 through 302.33, relating to prehearing, hearing, and post-hearing procedures, shall not be applicable except to the extent that DOT 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 ends of justice.

**§ 302.36 Final decision of DOT.**

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 which 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 § 302.37(a), in the manner provided by § 302.22a.

**§ 302.37 Petitions for reconsideration or review by the DOT decisionmaker.**

(a) *DOT orders subject to reconsideration; time for filing.* Unless an order or a rule of the Department specifically provides otherwise, any interested person may file a petition for reconsideration, of any interlocutory order issued by the Department which institutes a proceeding. Any party to a proceeding, unless an order or rule of the Department specifically provides otherwise, may file a petition for reconsideration, rehearing, or reargument of (1) final orders issued by the Department, or (2) an interlocutory order which defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department. Unless the time

is shortened or enlarged by the Department, 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, or a final decision described in § 302.1757 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 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 which 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 which exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by the Office of the Documentary Services.

(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 which has been considered or denied will not be entertained.

**§302.38 Petitions for rulemaking.**

Any interested person may petition DOT for the issuance, amendment, modification and 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.)

**§302.39 Objections to public disclosure of information.**

(a) *General.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of DOT to the public. (49 CFR 7.1 et seq.)

(b) *Information contained in paper to be filed.* Any person who objects to the public disclosure of any information contained in any paper filed in any proceeding, or in any application, report, or other document filed pursuant to the provisions of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the DOT thereunder, shall segregate, or request the segregation of, such information into a separate paper and shall file it, or request that it be filed, with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed, separately in a sealed envelope, bearing the caption of the enclosed paper, and the notation "Classified or Confidential Treatment Requested Under §302.39." At the time of filing such paper, or when the objection is made by a person not himself or herself filing the paper, application, report or other document, within five (5) days after the filing of such paper, the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (e) of this section, or in accordance with the procedure outlined in paragraph (d) of this section if objec-

tion is made by a Government department or a representative thereof. Notwithstanding any other provision of this section, copies of the filed paper and of the motion need not be served upon any other party unless so ordered by the DOT.

(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 lay representative of each party as the administrative law judge or the person before whom the deposition is being taken, as the case may be, 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 "Classified or Confidential Treatment Requested Under §302.39 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion, except as hereinafter provided in paragraph (d) of this section, in accordance with the procedure outlined in paragraph (e) 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 DOT.

(d) *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 representative thereof, under paragraph (b) or (c) of this section, the department making such objection shall be exempted from the provisions of paragraphs (b), (c), and (e) of this section insofar as said

paragraphs require the filing of a written objection to such disclosure. However, any department, or person representing said department, if it so desires, may file a memorandum setting forth the reasons on the basis of which 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.

(e) *Form of motion to withhold information from public disclosure.* Subject to the exception of paragraph (d) of this section, no information covered by paragraphs (b) and (c) of this section need be withheld from public disclosure unless written objection to such disclosure is filed with the DOT in accordance with the following procedure:

(1) The motion shall be headed with the title and docket number of the proceeding and shall be signed by the objecting person, any duly authorized officer or agent thereof, or by counsel representing such person in the proceeding.

(2) The motion shall include:

(i) A description of the information sought to be withheld, sufficient for identification of the same;

(ii) A statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)-(9)); and

(iii) And 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.

(3) Such motion shall be filed with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed.

If such motion relates to contracts, agreements, understandings, or arrangements an executed original copy and two copies of such motion shall be filed.

(f) *Motions referred to DOT.* The order of DOT 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 order shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the DOT's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by DOT, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the DOT's order.

(g) *Objections in proceeding before the DOT.* Notwithstanding any of the provisions of this section, whenever the objection to disclosure of information shall have been made, in the first instance, before the DOT itself, the written motion of objection contemplated by paragraphs (b), (c), and (e) of this section shall not be necessary but may be submitted if the parties so desire or if the DOT, in a particular case, shall so direct.

#### § 302.40 Saving clause.

Repeal, revision or amendment of any Economic Regulation of the DOT 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 B—Rules Applicable to Enforcement Proceedings

#### § 302.200 Applicability of this subpart.

(a) *In general.* This subpart contains the specific rules that apply to DOT proceedings to enforce the act and the rules, regulations, orders and other requirements issued by DOT. Subpart A of this part contains other rules that apply to these proceedings.

(b) *Informal complaints.* Informal complaints may be made in writing with respect to anything done or omitted to be done by any person in contravention of any provision of the act or any requirement established pursuant thereto without compliance with 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 a formal proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

**§ 302.201 Formal complaints.**

Any person may make a formal complaint to the Assistant General Counsel for Aviation Enforcement and Proceedings about any violation of the economic regulatory provisions of the act or of DOT's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The filing of a complaint shall result in a formal enforcement proceeding only if the Assistant General Counsel for Aviation Enforcement and Proceedings issues a notice instituting an enforcement proceeding as to all or part of the complaint under § 302.206(a) or the Deputy General Counsel does so under § 302.206(b). 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 for Aviation Enforcement and Proceedings. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.18.

**§ 302.202 [Reserved]**

**§ 302.203 Insufficiency of formal complaint.**

In any case where the Assistant General Counsel for Aviation Enforcement and Proceedings is of the opinion that a complaint does not sufficiently set forth the material required by any applicable rule, regulation or order of the DOT, or is otherwise insufficient, he or she may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

**§ 302.204 Third-party complaints.**

(a) A third-party complaint, and any amendments thereto, submitted pursuant to § 302.201 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 for Aviation Enforcement Proceeding.

(b) Within fifteen (15) days after the date of service of a third-party complaint, each person complained of shall file an answer in conformance with and subject to the requirements of § 302.207(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for Aviation Enforcement and Proceedings for good cause shown.

(c) A person complained against in a third-party 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.

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

**§ 302.205 Procedure when no enforcement proceeding is instituted.**

(a) Within a reasonable time, but not more than 60 days, after an answer to a formal third-party complaint is filed, or such extension of that 60-day period as may be granted pursuant to § 302.206(b), the Assistant General Counsel for Aviation Enforcement and Proceedings shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.206(a) or issue a notice dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) A notice dismissing a complaint issued pursuant to paragraph (a) of this section shall become effective as a final order of DOT 30 days after service thereof.

**§ 302.206 Commencement of enforcement proceeding.**

(a) Whenever in the opinion of the Assistant General Counsel for Aviation Enforcement and Proceedings, there are reasonable grounds to believe that any provision of the Act, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel for Aviation Enforcement and Proceedings may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. 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 which it may deem necessary or proper.

(b) The Assistant General Counsel for Aviation Enforcement and Proceedings may at any time move, upon a showing of good cause, for an extension of the time within which to act upon a third-party complaint. Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings has failed to act on a third-party complaint within 60 days of the date when the answer is due, or within such extension of that period as may have been granted, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute a 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.

(c) 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.

**§ 302.206a Assessment of civil penalties.**

(a) Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in an enforcement proceeding, the Deputy General Counsel 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 an enforcement proceeding or in a separate document.

(b) Within 15 days after service of a notice proposing assessment of civil penalties, the respondent shall file a response specifically presenting any matters he or she intends to rely on in opposition to or mitigation of such civil penalties. The response may be contained in an answer filed under § 302.207.

(c) In any proceeding in which civil penalties are sought, the initial and final decisions 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.

**§ 302.207 Answer.**

(a) Within 15 days after the date of service of a notice issued pursuant to § 302.206, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.204. Any requests for extension of time for filing of an answer to a complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with DOT in accordance with § 302.17.

(b) All answers shall conform to the requirements of § 302.8(a)(2) 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 person complained of 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.

**§ 302.208 Default.**

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Department, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, in its 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.

**§ 302.209 Reply.**

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 shall be filed.

**§ 302.210 Parties.**

The parties to an enforcement proceeding shall be the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, the respondent, any person whose formal complaint alleged violations that were later covered by the notice of enforcement, and any other person permitted to intervene under § 302.15.

**§ 302.210a Consolidation of proceedings.**

The DOT decisionmaker or Chief Administrative Law Judge, upon his or her own initiative, or upon motion of any party, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings which involve

substantially the same parties, or issues which 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.

**§ 302.211 Prehearing conference.**

A prehearing conference may be held in an enforcement proceeding whenever the DOT decisionmaker or 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 § 302.23.

**§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.**

(a) At any time after answer has been filed, any party may file with DOT 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. 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. Service of such request and answering statement shall be made as provided in § 302.8. 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 or 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.

(b) At any time after 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 7 days after service of the motion.

(c) Parties may petition the DOT decisionmaker to review 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 § 302.28.

**§ 302.213 Hearing.**

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge or the DOT decisionmaker shall give the parties reasonable written notice of the time and place of the hearings.

**§ 302.214 Appearances by persons not parties.**

With consent of the administrative law judge or the DOT decisionmaker, 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 consent of the administrative law judge or the DOT decisionmaker, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be propounded to 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.

**§ 302.215 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. 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 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.

**§ 302.216 Evidence of previous violations.**

Evidence of previous violations by any person or of any provision of the act or any requirement thereunder found by DOT 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.

**§ 302.217 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 § 302.18. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

**§ 302.218 Modification or dissolution of enforcement actions.**

Whenever any party to a proceeding in which an order of DOT has been issued pursuant to section 1002(c) of the Act, or an injunction or other form of enforcement action has been issued by

§ 302.300

a court of competent jurisdiction pursuant to section 1007, 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 DOT a motion requesting that DOT 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. DOT shall dispose of the motion by such procedure as it deems appropriate.

**Subpart C—Rules Applicable to Mail Rate Proceedings**

**§ 302.300 Applicability of this subpart.**

This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by DOT for foreign air transportation and air transportation between points in Alaska. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of DOT.

**§ 302.301 Parties to the proceeding.**

The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom DOT permits to intervene. (See § 302.15.)

FINAL MAIL RATE PROCEEDINGS

**§ 302.302 Participation by persons other than parties.**

In addition to participation in hearings in accordance with § 302.14, persons other than parties may, within the time fixed for filing notice of objec-

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tions to an order to show cause in a mail rate proceeding as provided in § 302.305, 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.

**§ 302.303 Institution of proceedings.**

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 Postal Service, or upon the issuance of an order by DOT.

(a) 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 rate, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

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

(c) All petitions, amended petitions, and documents relating thereto shall be served upon the Postal Service by sending a copy to the Assistant General Counsel, Transportation, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the Postal Service shall consist of a statement in the document that the person filing it has served a copy on the Assistant General Counsel, Transportation, as required by this section. The petition need not be accompanied by any further proof of service, but upon setting any petition down for public hearing, the Department will cause notice of such hearing to be given to such interested persons as it deems appropriate in a particular case.

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

PROCEDURE WHEN AN ORDER TO SHOW  
CAUSE IS ISSUED**§ 302.304 Order to show cause.**

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT may issue an order directing the respondent to show cause why it should not adopt such provisional findings and conclusions, and such rates, as may be specified in the order to show cause.

**§ 302.305 Objections and answer to order to show cause.**

(a) Any person having objections to the provisional rates specified in such order shall file with the Department a notice of objection within ten (10) days after the date of service of such order.

(b) If such notice is filed as aforesaid, written answer and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause. The Department may specify different times for filing a notice of objection or an answer. An answer to an order to show cause shall contain specific objections, and exhibits in support thereof, and shall set forth the findings and conclusions, the rates, and the supporting exhibits which would be substituted for the corresponding items in the Statement of Provisional Findings and Conclusions, if such objections were found valid.

(c) A notice or answer filed by a person who is neither a party nor a person ultimately permitted to intervene shall be treated as a memorandum filed under § 302.302.

**§ 302.306 Effect of failure to timely file notice and answer raising material issue of fact.**

If no notice, or, if after notice, no answer is filed within the designated time, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision of the Department fixing rates, and, in such case, or if an answer timely filed raises no material issue of fact, the Department may thereupon, upon the basis of all of the documents filed in the proceeding, enter a final order fixing the fair and reasonable

rate or rates as specified in the order to show cause.

**§ 302.307 Procedure when material issue of fact is timely raised.**

If an answer raising a material issue of fact is filed within the time designated in the Department's order, a prehearing conference and hearing shall be held unless waived by all parties. The issues shall be limited to those specifically raised by the answer, except that at the prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to a full and fair determination of a fair and reasonable rate. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

**§ 302.308 Evidence.**

All direct evidence shall be in writing and shall be filed in exhibit form in advance of the hearing unless, for good cause shown, the administrative law judge otherwise directs.

PROCEDURE WHEN NO ORDER TO SHOW  
CAUSE IS ISSUED**§ 302.309 Hearing to be ordered.**

When no order to show cause is to be issued by the Department, the Department will order a hearing before an administrative law judge similar to that provided for in §§ 302.307 and 302.308, except that the issues at such hearing shall be formulated initially at a prehearing conference.

## TEMPORARY RATE PROCEEDINGS

**§ 302.310 Procedure for fixing temporary service and subsidy mail rates.**

(a) At any time during the pendency of a proceeding for the determination of final mail rates, the Department, upon its own initiative, or on petition by the carrier whose rates are in issue or the 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.

(b) Temporary service mail rates: The procedure for determining temporary mail rates involving an issue as

to the service mail rates payable by the Postal Service pursuant to section 406(c) of the Act shall be the same as for the determination of final mail rates, except that:

(1) Notice of objections to the Department's show cause order proposing temporary service mail rates must be filed by any party or petitioner for intervention within 8 days, and an answer within 15 days, of the time such order is served;

(2) Failure to file notice of objections within the 8-day period shall be deemed to be a waiver of all further procedural steps before final decision, including hearing and initial or tentative decision, and the proceeding will stand submitted to the DOT decisionmaker for final decision.

(3) In the absence of a convincing showing that it will result in substantial prejudice to any party or delay the proceeding, the administrative law judge shall require the parties to submit all their testimony in writing and shall closely limit cross-examination to the essential issues (bearing in mind the purpose and urgency of fixing temporary mail rates together with the fact that such temporary rates are subject to downward or upward adjustment upon the fixing of final rates), and shall in all other respects urgently expedite the proceeding.

INFORMAL MAIL RATE CONFERENCE  
PROCEDURE

**§ 302.311 Invocation of procedure.**

Conferences between DOT employees, representatives of air carriers, the 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.

**§ 302.312 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 the Department has in the processing of rate cases not involving a rate conference. The employee 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 employee's analyses and recommendations.

**§ 302.313 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 Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deems 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.

**§ 302.314 Conditions upon participation.**

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for 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 carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the Department; 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 word "information", as used in paragraph (b) of 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 a 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 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 carrier, which 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 this section, shall file a verified compliance report with the Documentary Services Division 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 carrier and

any representative of the Postmaster General actually present at the conference; (2) the carrier and the officers of any carrier which has had a representative at the conference; (3) the directors of any carrier, which has had a representative at the conference, the members of any firm of attorneys or consultants, which has had a representative at the conference, and the members of the Postmaster General's staff, who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.<sup>3</sup>

**§ 302.315 Information to be requested from carrier.**

With respect to the rate for the future period, the carrier will be requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment which will be required to perform the operations for a full future year. Full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the carrier's past 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 carrier shall be certified by a responsible officer.

**§ 302.316 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 carrier what might be termed a statement of exceptions showing areas of differences. Where practicable, the carrier may submit its answer to these exceptions. Conferences will then be scheduled to work out a clear understanding and resolution of the issues and facts from the standpoint of sound ratemaking principles.

<sup>3</sup> Restrictions on disclosure of confidential information and dealing in air carrier securities are imposed upon the DOT employees pursuant to applicable law.

**§ 302.317 Availability of data to Postal Service.**

The representatives of the 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 carrier, and a reasonable time shall be allowed to get acquainted with 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 Postal Service pursuant to section 406(c) of the Act representatives of the Postal Service shall be furnished with copies of data under this provision only upon their written request.

**§ 302.318 Post-conference procedure.**

The rate conferences not being in the nature of proceedings, no briefs, or argument, or any formal steps, will be entertained by the Department. The form, content and time of the staff's presentation to the Department 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 Department will grant such requests whenever it 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 act and the rules of practice.

**§ 302.319 Effect of conference agreements.**

No agreements or understanding 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 rate conferences were 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 § 302.23.

**§ 302.320 Waiver of §§ 302.313 and 302.314.**

After the termination of a mail rate conference hereunder, the carrier, whose rates were in issue, may petition the Department for a release from the obligations imposed upon it and all other persons by §§ 302.313 and 302.314. The Department 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 Department will grant or deny the request without assigning reasons therefor.

**§ 302.321 Time of commencing and terminating conference.**

At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conferences 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.

**Subpart D—Rules Applicable to Exemption Proceedings****§ 302.400 Applicability.**

This subpart sets forth the rules applicable to proceedings for exemptions under sections 101(3), 416(b)(1), 416(b)(3), and 416(b)(7) of the Federal Aviation Act. It also provides for the granting of emergency exemptions. The provisions of Subpart A of this part also apply to such proceedings where not inconsistent with this subpart. Proceedings

for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

**§ 302.401 Filing of application.**

(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 401 or 402 of the Act (and section 403 of the Act if accompanying the former) which involve 10 or fewer flights may be submitted to the Licensing Division, Office of Aviation Operations on CAB Form 302 or the DOT replacement form. However, that form may not be used for:

(1) Applications filed under section 416(b)(7) of the Act;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from DOT, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the DOT for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than 10 flights; or

(4) Any other application for which the DOT 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, or telephone. All telephone requests must be confirmed by written application within three business days of the original request.

(c) Applications for exemption from section 403 of the Act, tariffs (except for waivers filed under subpart Q of part 221 of this chapter), or DOT regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to the Documentary Services Division, Office of the General Counsel. Upon a showing of good cause, the application may also be filed by cablegram, telegram, or telephone. All telephone requests must be confirmed by written application within three 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 DOT may require such applications to be docketed if appropriate. The DOT will list the names and addresses of all persons filing such applications, and will briefly describe the authority sought, in its weekly list of applications filed.

**§ 302.402 Contents of application.**

(a) *Title.* An application filed under § 302.401(a) shall be entitled "Application for Exemption," and 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 Act or the rule, regulation, term, condition, or limitation from which 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 401 or 402 of the Act should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations which 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 DOT to officially notice;

(ii) Affidavits, or statements under penalty of perjury, establishing any other facts the applicant wants the Board 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 401 or 402 of the Act (except exemptions under section

416(b)(7)) 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 DOT and cite the pertinent finding. If the fact of reciprocity has not been established by the DOT, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 416(b)(7) of the Act 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 401 of the Act;

(2) All possible efforts have been made to accommodate the traffic requested by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, that are 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 undue hardship for the traffic in the market that cannot be accommodated by air carriers holding certificates under section 401 of the Act; and

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

(e) *Renewal applications.* An application requesting renewal of an exemption 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 §302.403.

**§ 302.403 Service of application.**

(a) *Manner of service.* An application for exemption shall be served as provided by §302.8.

(b) *General requirements.* Except for an application for exemption from sections 403 and 404 of the Act, an applicant shall serve on the persons listed in paragraph (c) of this section a notice that the application has been filed, and, upon request, shall promptly provide those persons with copies of the application and any supporting documents. (Applicants filing CAB Form 302, or the DOT replacement form may serve a copy of the form instead of a notice.) The notice must clearly state the authority sought, the due date for responsive pleadings, and that copies of the application will be supplied upon request. Responsive pleadings shall be filed in accordance with paragraph (c) of this section.

(c) *Persons to be served.* (1) Applicants for scheduled interstate or overseas 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) local airport authorities at each point specified in the application, and (iii) any other person who has filed a pleading in a related proceeding under section 401 or 416 of the Act.

(2) Applicants for scheduled foreign air transportation authority shall serve (i) all U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market(s) specified in the application in the "Official Airline Guide" or in the "Air Cargo Guide" and (ii) any other person who has filed a pleading in a related proceeding under section 401, 402, or 416 of the Act.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 401, 402, or 416 of the Act. However, applicants that file less than 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.

(d) *Additional service.* The DOT may, in its discretion, order additional service made on any other person.

**§ 302.404 Posting of application.**

A copy of every application for exemption shall be posted in the Documentary Services Division and listed in the DOT's weekly list of applications filed.

**§ 302.405 Dismissal or rejection of incomplete application.**

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

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

**§ 302.406 Answers to applications for exemption.**

Within 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 DOT is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

**§ 302.407 Replies to answers.**

Within seven days after the last day for filing an answer, an applicant may file a reply to one or more answers.

**§ 302.408 Request for hearing.**

The DOT will not normally conduct formal hearings concerning applications for exemption. However, the DOT may, in its discretion, order a hearing on an application. Any applicant, or any party opposing an application, may request a 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 DOT orders a hearing, the procedures in Subpart A of this part shall apply.

**§ 302.409 Exemptions on the Department's initiative.**

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

**§ 302.410 Emergency exemptions.**

(a) *Applicability.* When required by the circumstances and consistent with the public interest, the DOT 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 DOT may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b) *Applications.* (1) Applications for emergency exemption need not conform to the requirements of Subparts A and D of this part (except as provided in this section and in § 302.402(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 DOT may require additional information from any applicant before acting on an application.

(2) The DOT 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 business days of the original request.

(c) *Notice.* Except when the DOT decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in §302.403(c) 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 DOT.

### Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges

#### § 302.500 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT.

#### § 302.501 Institution of proceedings.

A proceeding to determine rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawful 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 DOT.

#### § 302.502 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 carrier against whose tariff provision the petition or complaint is filed.

#### § 302.503 Dismissal of petition or complaint.

If DOT is of the opinion that a petition or complaint does not state facts

which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

#### § 302.504 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 transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and assigning the proceeding for hearing before an administrative law judge. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

#### § 302.505 Complaints requesting suspension of tariffs—answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 1002(j) of the Act shall fully identify the tariff and include reference (1) to the issued or posting date, (2) to the effective date, (3) to the name of the publishing carrier or agent, (4) to the DOT number, and (5) to 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 1002(j) of the Act, 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 complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the

Department and to the carrier against whose tariff provision the complaint is made. Such a telegraphic complaint shall state the grounds relied upon, and must immediately be confirmed by complaint 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.

**§ 302.506 Burden of going forward with the evidence.**

At any hearing involving a change in a rate, fare, or charge for the transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rate fare, or charge, the burden of going forward with the evidence shall be upon the person proposing such change to show that the proposed changed rate, fare, charge, classification, rule, regulation or practice is just and reasonable, and not otherwise unlawful.

**§ 302.508 Computing time for filing complaints.**

In computing the time for filing formal complaints pursuant to § 302.505, with respect to tariffs which 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 DOT, in which event the period for filing shall be extended to the next successive day which is neither a Saturday, Sunday, nor holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.16.

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

SOURCE: Docket No. 49830, 60 FR 6927, Feb. 3, 1995, unless otherwise noted.

**§ 302.601 Applicability of this subpart.**

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers, pursuant to 49 U.S.C. 47129 (a), for a determination of the reasonable-

ness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the air carrier or foreign air 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 has imposed a fee on an air carrier or foreign air 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 air carriers or foreign air carriers 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.

**§ 302.603 Complaint by an air carrier or foreign air carrier; request for determination by an airport owner or operator.**

(a) Any air carrier or foreign air 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 air carriers. The complaint or request for determination shall conform to the requirements of this subpart and § 302.3 concerning the form and filing of documents.

(b) If an air carrier or foreign air 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 7 calendar days following the initial complaint. In addition, all complaints or requests for determination must be filed on or before the 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 §§ 302.611 and 302.613.

**§ 302.605 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 available to the carrier 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. Word processing and spreadsheet files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the FEDERAL REGISTER: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M-50), and one copy to the Chief, Economic and Financial Analysis Division (X-55), of 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 submit the following certifications:

(1) The carrier has served the complaint, brief, and all supporting testimony and exhibits on the airport owner or operator and all other air carriers and foreign air carriers serving the airport by hand, by electronic transmission, or by overnight express delivery. (Unless an air carrier or foreign air carrier has informed the com-

plaining 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) The parties served have received the complaint, brief, and all supporting testimony and exhibits or will receive them no later than the date the complaint is filed;

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

(4) 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

(5) 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 submit the following certifications:

(1) The airport owner or operator has served the request, brief, and all supporting testimony and exhibits on all air carriers and foreign air carriers serving the airport by hand, by electronic transmission, or by overnight express delivery. (Unless the air carrier or foreign air carrier has informed the airport owner or operator 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) The carriers served have received the request, brief, and all supporting testimony and exhibits or will receive them no later than the date the request is filed;

(3) The airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and

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

**§ 302.607 Answers to a complaint or request for determination.**

(a)(1) When an air carrier or foreign air carrier files a complaint under this subpart, the owner or operator of an airport and any other air carrier or foreign air 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 air carrier or foreign air 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 § 302.603(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 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 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. Word processing and spreadsheet files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the FEDERAL REGISTER: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties

should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M-50), and one copy to the Chief, Economic and Financial Analysis Division (X-55), of the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(e) The answering party must also submit the following certifications:

(1) The answering party 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;

(2) The parties served have received the answer and exhibits or will receive them no later than the filing date of the answer; and

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

**§ 302.609 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 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. Word processing and spreadsheets files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the FEDERAL REGISTER: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M-50), and one copy to the Chief, Economic and Financial Analysis Division, (X-55) of the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

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

**§302.611 Review of complaints.**

(a) Within 30 days after a complaint is filed under this subpart, the Secretary will determine whether the complaint 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.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint 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) The Secretary will dismiss any complaint if he or she finds that no sig-

nificant dispute exists. The order dismissing the complaint will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(d) If the Secretary determines that the complaint does not meet the procedural requirements of this subpart, the complaint 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 may be filed.

**§302.613 Review of requests for determination.**

(a) Except as provided in paragraph (e) of this section, within 30 days after an airport owner or operator files a request for determination of the reasonableness of a fee under this subpart, the Secretary will determine whether the request meets the procedural requirements of this subpart and whether a significant dispute exists.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the request for hearing before an administrative law judge. The instituting order will establish the scope of the issues to be considered and the procedures to be employed and will indicate the parties to participate in the hearing. The instituting order will consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute.

(c) If the Secretary finds that the request for determination presents no significant dispute, the Secretary will either issue a final order as provided in §302.621 or set forth the schedule for any additional procedures required to complete the proceeding.

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

(e) 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 30 days after the complaint is filed.

**§302.615 Decision by administrative law judge.**

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

**§302.617 Petitions for discretionary review.**

(a) Within 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 §302.28(a). The petitioner must also submit the following certifications:

(1) The petitioner has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding; and

(2) The parties served have received the petition or will receive it no later than the date the petition 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 4 calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in §302.28(b).

**§302.619 Completion of proceedings.**

(a) When a complaint 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 is filed.

(b) When a request for determination has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to wheth-

er the fee is reasonable within 120 days after the date the request for determination is filed.

(c) 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.

**§302.621 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.

**Subparts G–H [Reserved]**

**Subpart I—Rules Applicable to Route Proceedings under Sections 401 and 402 of the Act**

GENERAL PROVISIONS

**§302.901 Applicability.**

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules (parts 201 and 211 for the form of applications) and orders of DOT.

## INITIATION OF ROUTE PROCEEDINGS

**§ 302.915 Initiation of route proceedings by DOT order.**

(a) *Purpose and policy.* The purpose of this section is to establish a procedure for the initiation of proceedings involving particular routes or geographic areas, in addition to existing procedures under subpart A, so that the Department may select the one best suited to the efficient and expeditious disposition of route proceedings.

(b) *Order instituting proceedings.* The Department may initiate a route proceeding by issuing an order of investigation or an order to show cause which, respectively, defines the scope of the issues in the proceeding, or consolidates pending applications and proceedings for simultaneous hearing, or institutes investigations under section 401(g) or 402(f) of the Act directed to the amendment of outstanding certificates of public convenience and necessity and foreign air carrier permits, and specifies other matters included in the proceeding.

(c) *Pleadings in response to Department order instituting proceedings.* Any person having a substantial interest may respond to the Department's order instituting a proceeding by filing with the Department a written answer, or a motion pursuant to § 302.12, or both, within the period of time specified in said order. Such answer or motion shall set forth all objections and proposals which such persons may have with respect to the geographic scope of the proceeding or the scope of the issues, as respectively defined in such order. Such answer or motion shall be in lieu of petitions for reconsideration of said order under § 302.37. Any such objection or proposal which is not set forth in such answer or motion shall be deemed to have been waived. Any person who fails to file a timely answer or motion in response to the Department's order shall also be deemed to have waived his or her right to have his or her own application consolidated or contemporaneously considered with those falling within the geographic scope of the proceeding or the scope of the issues therein, as respectively defined in said order: *Provided, however,* That where

any further order of the Department adds to the geographic scope of a proceeding or the scope of the issues therein beyond that defined in the Department's order instituting such proceeding, failure to file an answer or motion addressed to the Department's first order shall not preclude the filing of a petition under § 302.37, or of a motion under § 302.12, addressed exclusively to the additional scope or issues.

(d) *Answers to motions.* Answers in support of or in opposition to motions as mentioned in paragraph (c) of this section may be filed within seven (7) days after service of such motions or within such other period as may be specified in the Department's order.

## CONDUCT OF ROUTE PROCEEDINGS

**§ 302.930 Evidence in route proceedings.**

*Route authority not specifically applied for.* Applicants for certificate authority under section 401 of the Act may not introduce, in support of awards to them of such authority, evidence that does not support service to the points, routes, or areas specifically described in their applications.

**Subpart J—Rules Applicable to Proceedings Involving Charter Air Carriers****§ 302.1001 Applicability.**

This subpart sets forth procedural rules specifically applicable to certain proceedings involving charter air carriers. For information as to other applicable rules, reference should be made to subparts A and B of this part, to the Federal Aviation Act of 1958, as amended, and to the substantive rules and orders of the Department. See especially part 208 of this chapter (Economic Regulations).

**§ 302.1002 Definition.**

As used in this part, *charter air carrier* means a person holding operating authority issued pursuant to section 401(d)(3) or 417 of the Federal Aviation Act of 1958, as amended.

IMMEDIATE SUSPENSION OF OPERATING  
AUTHORITY**§ 302.1011 Rules governing proceedings.**

Proceedings for suspension, modification or revocation of a charter air carrier certificate pursuant to section 401(n)(5) of the Act, shall be governed by §§ 302.1012 to 302.1017 and, as to matters not provided for in said sections, by subparts A and B of this part.

NOTE: Secs. 302.1012 to 302.1017 do not apply to proceedings for modification, suspension or revocation not initiated under, or by reference to, the provisions of section 401(n)(5) of the Act.

**§ 302.1012 Order of suspension.**

In any case in which the Department determines that the failure of a charter air carrier to comply with the provisions of paragraphs (q) or (r) of section 401 of the Act or regulations or orders of the Department thereunder requires, in the interest of the rights, welfare or safety of the public immediate suspension of such carrier's certificate or other operating authority as the case may be, the Department will issue, without notice or hearing, an order of suspension which will set forth:

(a) The duration of the suspension, which initially will be for not more than 30 days;

(b) The specific provision or provisions of section 401 (q) or (r), or of the regulations or orders of the Department thereunder with which the carrier has failed to comply together with the manner of such failure;

(c) A determination that such failure requires the immediate suspension, in whole or in part as the case may be, of the carrier's operating authority in the interest of the rights, welfare, or safety of the public;

(d) A statement that the order shall constitute a complaint instituting a formal economic proceeding on which a hearing shall be held to determine whether the charter air carrier's operating authority should be modified, suspended or revoked;

(e) A statement as to which attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings are to be made a party to the proceeding.

**§ 302.1013 Answer of carrier.**

(a) *Time for filing, and contents.* Within 7 days of service of the order of suspension, the carrier may file and serve on all parties an answer to the order of suspension. No objections or affirmative defenses not plainly raised in the answer may be raised subsequently in the proceeding, except if based on grounds of newly discovered evidence or supervening events. Late filing of an answer shall be permitted only for good cause shown.

(b) *Failure to file an answer.* In case of the carrier's failure to file and serve an answer to the order within the time and in the manner prescribed, the right to all further procedural steps before final decision, including hearing, briefs, and recommended and tentative decisions, shall be deemed waived, and the Department will proceed immediately to disposition of the case.

**§ 302.1014 Motions.**

(a) *Motions for termination of suspension and/or proceeding.* (1) The charter air carrier may at any time file and serve on all parties to the proceeding, a motion addressed to the Department asking that the suspension be lifted, on the ground (i) that suspension, pending completion of the proceeding, is not required in the interest of the rights, welfare or safety of the public; or (ii) that the carrier has come into compliance with the provision or provisions with which it had failed to comply. Such motions may be combined with a motion to terminate the proceeding. Such motions shall be made in lieu of petitions for reconsideration of the Department's initial order, or of motions to dismiss.

(2) Motions made pursuant to paragraph (a)(1) of this section will be submitted to the DOT decisionmaker for determination. The DOT decisionmaker may grant motions for termination of suspension in proper cases without waiting for expiration of the time for answers but parties may submit informal written or telegraphic statements of position on such motions which will be considered if received prior to DOT action. Such communications need not be served separately but

shall be copied in full in a timely answer filed and served pursuant to the provisions of this part.

(b) *Motions directed to pleadings.* No motion for more definite statement shall be made but the substance thereof may be stated in the answer. The administrative law judge may permit or require a more definite statement or other amendment to any pleading at the hearing upon just and reasonable terms.

(c) *Motions for extension of time.* Substantial extensions of procedural dates shall be granted only when required in the interest of justice, unless the respondent air carrier stipulates that it will refrain from operating the suspended service until the Department's adjudication on the merits of the proceedings becomes final even though the Department has exhausted its emergency suspension power. The filing of motions for extension shall not operate to excuse failure of timely compliance with any procedural requirement.

(d) *Other motions.* The provisions of § 302.18 shall govern the above mentioned motions in respects not provided for in this section, and shall govern any other motions, except that answers to written motions shall be filed and served within 5 days of service of such motions.

**§ 302.1015 Additional suspension.**

Pending the completion of proceedings hereunder, the Department, upon motion or its own initiative, may further extend the period of suspension of the charter carrier's operating authority for an additional period or periods aggregating not more than 60 days.

**§ 302.1016 Expedited hearing.**

The administrative law judge shall set the date of hearing not later than 15 days after the issuance of the DOT decisionmaker's suspension order. He or she may postpone the date of the hearing, or grant continuations of the hearing, only to the extent necessary in the interest of justice. The administrative law judge shall urgently expedite the proceeding and shall fix all procedural dates on the basis of maximum acceleration consistent with justice. Proposed findings and conclusions and supporting reasons shall be stated

orally on the record. The delegation of § 302.27(a) shall not be applicable and the administrative law judge shall, upon termination of the hearing, make his or her initial decision orally on the record. Requests for a written initial decision may be granted on the same condition as substantial extensions of procedural dates (§ 302.1014(c)).

**§ 302.1017 Final decision.**

The parties may appeal from the initial decision by filing with the Department and serving upon all other parties a notice of appeal within two days after the rendering of the initial decision if it is made orally, or the service of a written initial decision, as the case may be. No exceptions shall be filed but within 10 days of the notice of appeal each party may file one brief (§ 302.31(c)) with the Department. The DOT decisionmaker will give three days' notice of oral argument, where granted. If no notice of appeal is filed, or if no brief is filed by the party or parties having filed a notice of appeal, within the times herein provided, the initial decision shall without further proceedings become the final decision of the Department five days after expiration of the time for filing notice of appeal or brief, as the case may be unless the DOT decisionmaker has issued an order to review upon his or her own initiative.

**Subparts K–N [Reserved]**

**Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation**

**§ 302.1501 Applicability.**

This subpart sets forth the rules applicable to certain contractual arrangements between the Postal Service and certificated air carriers for the transportation of mail by air entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772. Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than 5 percent, based on weight, of the international mail transported under any such contract may consist of letter mail. Any such contract is required by

the statute to be filed with the Department not later than 90 days before its effective date, and unless the Department disapproves the contract not later than 10 days prior to its effective date, the contract automatically becomes effective.

**§ 302.1502 Filing.**

Any air carrier which is a party to a contract to which this subpart is applicable shall file eight copies of the contract in the Documentary Services Division, Department of Transportation, Washington, D.C. 20590, not later than 90 days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.1504 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 carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

**§ 302.1503 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:

(a) Estimates of the costs of performing the contract, and an explanation of the basis for the estimates which clearly sets forth the methodology involved in the assignment of direct and all allocated costs and the investment related thereto (including, where available and relevant, data as to costs of performing past contracts for the transportation of mail by air);

(b) Estimates of the effect of the contract upon such carrier's revenues, and an explanation of the basis for the estimates (including, where available and relevant, data as to effects upon revenues resulting from past contracts for the transportation of mail by air); and

(c) 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.

**§ 302.1504 Service.**

A copy of each contract filed pursuant to § 302.1502, and a copy of all material and data filed pursuant to § 302.1503, shall be served upon each of the following persons:

(a) Each certified route air carrier, other than the contracting carrier, which is authorized to carry mail between any pair of points between which mail is to be transported pursuant to the contract;

(b) Each commuter air carrier (as defined in § 298.2 of this chapter) which serves between any pair of points between which mail is to be transported pursuant to the contract; and

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

**§ 302.1505 Complaints.**

Within 15 days of the filing of a contract, any interested person may file with the Department a complaint against 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 § 302.1504.

**§ 302.1506 Answers to complaints.**

Answers to the complaint may be filed within 10 days of the filing of the complaint, with service being made as provided in § 302.1505.

**§ 302.1507 Further procedures.**

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

(b) In cases where no complaint is filed, the Department may issue an

order directing the parties to the contract to show cause why the contract should not be disapproved, or such other order as may be appropriate. Unless otherwise specified by the Department, written answer to the order and supporting document shall be filed within 10 days of the date of service of the order to show cause. A final order containing the Department's determination as to whether the contract should be disapproved, shall be issued not later than 10 days prior to the effective date of the contract.

**§ 302.1508 Petitions for reconsideration.**

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

**Subpart P [Reserved]**

**Subpart Q—Expedited Procedures for Processing Licensing Cases**

**§ 302.1701 Applicability.**

This subpart sets forth the rules applicable to proceedings on:

(a) Applications for certificates of public convenience and necessity and renewals, amendments, modifications, suspensions and transfers of certificates under sections 401(d)(1), 401(d)(2), 401(d)(3), 401(g), and 401(h) of the Act;

(b) Applications under section 401(e)(7)(B) of the Act for the removal or modification of a term, condition, or limitation attached to a certificate; and

(c) Applications for foreign air carrier permits, and renewals, alterations, amendments, modifications, suspensions, and transfers of such permits under sections 402(c) and 402(f) of the Act.

(d) Applications for all-cargo air service certificates, and renewals, alterations, amendments, modifications, suspensions, and transfers of such certificates under section 418 of the Act.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Docket No. 47582, 57 FR 38770, Aug. 27, 1992]

**§ 302.1702 Subpart A governs.**

Except as modified by this subpart, the provisions of subpart A of this part continue to apply.

**§ 302.1703 Filing of applications.**

Any person may file an application of the type described in § 302.1701. Applications for foreign air carrier permits shall be filed as specified in § 211.2 of this chapter. The Department will publish in the FEDERAL REGISTER a weekly list of applications filed under this subpart.

**§ 302.1704 Contents of applications.**

(a) Applications under this subpart (including applications filed under § 302.1720(c) or conforming applications filed under § 302.1720(e) or § 302.1730(c)) shall indicate on the cover page how the applicant proposes that its application be processed (See § 302.1750). Certificate applications shall contain the information required by part 201 of this chapter and foreign air carrier permit applications shall contain the information required by part 211 of this chapter. Applications shall also include:

(1) A statement of economic data and other matters that the applicant desires the Department to notice officially;

(2) Written evidence establishing the facts that the applicant relies on to establish its fitness and to show that the grant of the relief requested is consistent with or required by the public convenience and necessity, or is in the public interest, as applicable; and

(3) The applicant's opening argument.

(b) Each application shall be accompanied by an Environmental Evaluation in conformity with parts 312 and 313 of this chapter unless a waiver or exemption has been granted under § 312.6.

(c) 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) Applications shall include a list of the names and addresses of all persons that have been served.

**§ 302.1705 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. Persons shall file responsive pleadings in accordance with paragraph (b).

(2) After the order establishing further procedures under §301.1750 has been issued, persons need only serve documents on those listed in the service list accompanying the order.

(3) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a) 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 described in §302.1701 (a) and (b) (except for those proceedings under section 401(d)(3) of the Act):

(A) applicants for certificates to engage in interstate or overseas air transportation, and other persons, shall serve:

(1) The airport authority of each airport that the applicant 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 or other persons shall serve:

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

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

(3) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings under section 401(d)(3) of the Act, applicants and other persons are not required to serve any person, except as the DOT may direct.

(2) *Foreign air carriers.* (1) In foreign air carrier permit proceedings described in §302.1701(c) (except for those

proceedings involving charter-only authority), applicants and other persons shall serve:

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

(B) The U.S. Departments of State, and

(C) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority, applicants 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, in 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.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt. 302-72, 52 FR 5445, Feb. 23, 1987]

**§ 302.1706 Computation of time.**

All time periods prescribed in this subpart are stated in terms of calendar days. Intermediate Saturdays, Sundays and holidays shall be included in the computation. In all other respects, §302.16 applies.

**§ 302.1707 Verification.**

The facts asserted in any pleading filed under this subpart shall be attested to by persons having knowledge of them and this attestation shall be stated in an affidavit in support of the pleading. Such persons shall be those who will appear as witnesses to substantiate the facts asserted if an oral hearing becomes necessary.

**§ 302.1708 Joint pleadings.**

Parties having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

**§ 302.1709 Definition of parties.**

Notwithstanding the provisions of §§ 302.14 and 302.15, any person may participate in proceedings under this subpart. Petitions for leave to intervene are not required. Any person may become a party by filing a pleading in the docket before the issuance of the order establishing further procedures.

**§ 302.1710 Economic data and other facts.**

Whenever economic data and other facts are provided, 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.

**§ 302.1711 Continuances and extensions of time.**

The procedures described in § 302.17 will apply to proceedings under this subpart. The filing deadlines in certificate proceedings will be strictly enforced and extensions will be granted only in extraordinary circumstances. Extensions in foreign air carrier permit cases will be granted for good cause shown.

**§ 302.1712 Oral presentation; initial or recommended decision.**

(a) *Cases to be decided on written submissions.* Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required.

(b) *Petitions for oral presentation or judge's decision.* Any party 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 § 302.1770 are applicable to the issues for which an oral presentation or judge's decision is re-

quested. 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, including an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present;

(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; and

(3) 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.

(c) *Time for filing petitions.* Petitions for an oral hearing, oral argument, or a judge's decision shall be filed as soon as practicable, but in no event later than:

(1) 52 Days after the filing of the original application in proceedings governed by § 302.1720;

(2) 35 Days after the filing of the original application in proceedings governed by § 302.1730; and

(3) 14 Days after the due date for answers in proceedings governed by § 302.1740.

(d) *Stipulations.* Where a stipulation of disputed facts would eliminate the need for an oral presentation or judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

**§ 302.1713 Preliminary procedures for rejection or deferral of nonconforming applications.**

Within 21 days after the filing of any application under this subpart (including an application which is sought to be consolidated or a conforming application), the DOT decisionmaker may, on behalf of the Department, (a) reject any application that does not comply with this subpart, or (b) defer further processing of the application until information necessary to process the application is submitted. Applications

will not be processed, and the time periods contained in this subpart shall not begin to run, until the application is complete. In addition, the DOT decisionmaker may, on behalf of the Department, defer action on a foreign air carrier permit application for foreign policy reasons. Petitions for review of the staff action taken under this section may be filed in accordance with subpart C of part 385 of this chapter.

**§302.1720 Procedures in certificate cases.**

(a) *Applicability.* This section applies to the certificate cases described in §302.1701(a).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person that wishes to support or oppose the application must file an answer indicating briefly that person's position, and serve that answer on all persons served with the application. The notice shall also state the due date for answers.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application filed under §302.1701(a). 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 28 days after the original application is filed.

(d) *Answers to applications.* 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. Answers to the original application shall be filed within 28 days after the filing of the original application. Answers to applications filed in accordance with paragraph (c) of this section shall be filed within 42 days after the filing of the original application.

(e) *Answers to motions to modify scope.* Any person may file an answer to a motion to modify scope within 42 days after the filing of the original application. Answers shall set forth the basis

for the support of or opposition to the motion, including any economic data or other facts relied on. 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 include the information prescribed in §302.1704. Answers and applications shall not, however, propose the consideration of additional markets.

(f) *Order establishing further procedures.* Within 90 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

**§302.1730 Procedures in restriction removal cases.**

(a) *Applicability.* This section applies to the certificate cases described in §302.1701(b).

(b) *Applications.* Each application to which this section applies shall be limited to a single city-pair market or a single restriction unless a waiver of this requirement has first been obtained under §302.1790. All restriction removal applications (including conforming applications under paragraph (c) of this section) shall include a notice on the cover page that any person wishing to support or oppose the application must file an answer briefly describing its position, and serve a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Any application that does not conform with this paragraph will be rejected unless a waiver has been granted before the application is filed.

(c) *Conforming applications.* The issues in any proceeding under this section will be limited to those raised in the original application. Motions to modify the scope of the proceeding will not be entertained. Any person may file an application conforming to the scope of the proceeding within 14 days after the filing of the original application. Conforming applications are automatically consolidated. Nonconforming applications will be rejected under §302.1713.

(d) *Answers to applications.* Any person may file an answer in support of or

in opposition to any application. Answers to the original application shall be filed within 14 days after the filing of that application. Answers to conforming applications shall be filed within 28 days after the filing of the original application.

(e) *Order establishing further procedures.* Within 60 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

**§302.1740 Procedures in foreign air carrier permit cases.**

(a) *Applicability.* This section applies to the foreign air carrier permit cases described in §302.1701(c).

(b) *Notice on cover page.* Applications to which this section applies 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. Time limits shall be calculated from the date of filing with the Documentary Services Division. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall be filed within 28 days after the filing of the application and shall include any economic data, other facts, and argument upon which the person relies to support its position.

(d) *Executive departments.* The views of the Department of State and the Federal Aviation Administration's evaluation of the applicant's operational fitness shall be filed not later than the due date for answers to applications.

(e) *Order establishing further procedures.* As soon as possible after the date that answers are due, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

**§302.1750 Disposition of applications—orders establishing further procedures.**

(a) *General requirements.* Within the time limits established in §302.1720(f), §302.1730(e), or §302.1740(e), as applicable, the DOT decisionmaker will issue an order establishing further procedures in each case. 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. With respect to all or any portion of each application, the DOT decisionmaker will take one of the following actions:

(1) Set the application for oral evidentiary hearing. In this event, all of the procedures set forth in §§302.1751 through 302.1755 will apply unless the DOT decisionmakers decides otherwise. The DOT decisionmaker may limit the scope of the issues to be decided in an oral evidentiary hearing. In that event, the procedures set forth in §§302.1751 through 302.1755 will apply to the oral evidentiary hearing phase of the case, and the DOT decisionmaker will indicate what procedures will be employed in deciding the other issues in the case.

(2) Dismiss the application. This action constitutes a final DOT order subject to judicial review. Petitions for reconsideration of such an order will be entertained. This option will not be used in restriction removal cases under §302.1730.

(3) Announce that the Department has begun to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker will indicate which, if any, of the procedural steps set forth in §§302.1752 through 302.1756 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(4) Announce that the Department will decide the case by show cause procedures or issue an Order to Show Cause why the application should not be granted.

(b) *Additional evidence.* The order establishing further procedures may provide for the filing of additional evidence.

(c) *Petitions for reconsideration of an order establishing further procedures.* Petitions for reconsideration of an order establishing further procedures will not be entertained except to the extent that the order dismissed 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 §302.1757 will be calculated from the date of the order reinstating the application.

**§302.1751 Oral evidentiary hearing.**

If the Department determines under §302.1750(a) that an oral evidentiary hearing should be held, the application or applications will be set promptly for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures.

**§302.1752 Briefs to the administrative law judge.**

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) 14 days after the close of the oral evidentiary hearing established under §302.1750(a)(1), 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) 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 Department determines that some other period should be allowed.

**§302.1753 Administrative law judge's initial or recommended decision.**

(a) In a case that has been set for oral evidentiary hearing under §302.1750(a)(1), the administrative law judge shall adopt and serve an initial or recommended decision within 136 days after the issuance of the order establishing further procedures unless:

(1) The Department, having found extraordinary circumstances, has by

order delayed the initial or recommended decision by a period of not more than 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 §302.1750(a)(1), the administrative law judge shall issue 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 14 days after it is served. Unless exceptions are filed under §302.1754 or the DOT decisionmaker issues an order to review on its own initiative, an initial decision shall become effective as the final order of DOT 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 §302.27 shall be applicable.

**§302.1754 Exceptions to administrative law judge's initial or recommended decision.**

(a) *Time for filing.* Within 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 Department.

(b) *Form and content of exception.* Exceptions shall comply with §302.30(b).

(c) *Effect of failure to file timely and adequate exceptions.* The provisions of §302.30(c) shall apply.

(d) *Review is automatic.* If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

**§ 302.1755 Briefs.**

The provisions of §302.31 shall apply, except that:

(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 14 days after service of the initial or recommended decision.

(b) In a case in which an initial or recommended decision has been issued and no exceptions have been filed, briefs shall not be filed unless the DOT decisionmaker has taken review on his or her own initiative and specifically provided for the filing of briefs to the DOT decisionmaker.

(c) In a case in which an initial or recommended decision will not be issued, briefs to the DOT decisionmaker may be filed only if specifically provided for in the order establishing further procedures, and only upon the issues specified in that order. Such briefs may be filed by any party within 21 days after the service date of the order establishing further procedures, unless that order established a different due date.

**§ 302.1756 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 advised of the date and hour set for that argument and the amount of time allowed each party. The provisions of §302.32(b) shall also apply.

**§ 302.1757 Final decision of the Department.**

In addition to the provisions of §302.36, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under §302.1750(a)(1), DOT will issue its final order within 90 days after the initial or recommended decision is issued. If an applicant 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 in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President under section 801 of the Act.

(c) In the case of a certificate application that has been processed under §302.1750(a)(3) or (4), the Department will issue its final order within 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.

**§ 302.1758 Petitions for reconsideration.**

The provisions of §302.37 shall apply to petitions for reconsideration.

**§ 302.1760 Internal procedures.**

(a) In deciding which of the procedures set forth in §302.1750 will be used for each case under this subpart, the DOT decisionmaker will receive a recommendation from the Director of Aviation Analysis. That recommendation will be coordinated with the General Counsel and the Chief Administrative Law Judge, or their designees. If there is disagreement in that group, separate recommendations will be promptly submitted to the extent necessary to reflect their views.

(b) In deciding each case under this subpart on the merits, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Analysis, and the Office of the General Counsel. If there is disagreement among these employees, separate recommendations will be promptly submitted to the extent necessary to reflect those views.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt. 302-74, 58 FR 34882, June 30, 1993]

**§ 302.1770 Criteria for use of oral evidentiary hearing procedures and assignment of a case to an administrative law judge.**

The Department will assign applications made under §§ 302.1701, 302.1720 (c) and (e), 302.1730(c) and 302.1740 for consideration under the expedited procedures of this subpart and order the record presented directly to the DOT decisionmaker for final decision unless it determines that:

- (a) Use of expedited procedures will prejudice a party;
- (b) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or
- (c) 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.

**§ 302.1780 Standards for deciding cases in which expedited, simplified procedures are employed.**

The standards employed in deciding cases under § 302.1750(a)(3) or (4) shall be the same as the standards applied in cases decided under § 302.1750(a)(1). These are the standards set forth in the Federal Aviation Act of 1958, as amended, as interpreted and expanded upon under the Act.

**§ 302.1790 Waivers.**

Upon the filing of a motion, the DOT decisionmaker or the Assistant General Counsel for International Law, as appropriate, may, on behalf of the Department, grant such waivers from the terms and limitations contained in this subpart as it shall find to be consistent with the public interest and the proper dispatch of DOT's business. Petitions for review of the staff action taken under this section may be filed in accordance with subpart C of part 385 of this chapter.

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