

contract, agreement or request to discuss a cooperative working arrangement and describe how it changes any price, rule or practice existing under a previously-approved application. The application also, consistent with Department of Transportation and CAB precedent, shall contain factual material, documentation and argument in support of the application. Economic analyses, when required, shall include full explanatory details, including data sources and allocation methods. If the applicants intend to rely on public benefits to justify approval they shall describe these benefits, including foreign policy and comity considerations.

**§ 303.32 Service of the application.**

(a) Except as provided in paragraph (b) of this section, a section 412 application described in § 303.30(c) of this subpart and any related pleadings shall be served on any person or organization that has previously advised the air carrier association of its desire for service of such agreements. Each application shall contain the names and addresses of all persons served and a notice that any party in interest may within 21 days of the date of the application file comments with the Assistant Secretary in support or opposition to the application.

(b) Service of IATA Traffic Conference agreements and amendments thereto upon any person or organization that previously has advised IATA of its desire for service of agreements may be accomplished by sending a summary notice specifying the filing date; the IATA memorandum number; the particular Conferences involved; the subject matter (*e.g.* cargo/passenger, tariffs/agency matters/ procedures); the proposed effective date(s); the markets or Conference areas affected; the names of the carriers participating in the agreement; the names of all persons served; and a notice that any party in interest may within 21 days of the date of filing of the application file comments with the Assistant Secretary in support of or opposition to the application. A request for a complete copy of the application can be made under the provisions of § 303.04(j).

**§ 303.33 Modifications and cancellations.**

This subpart also applies to all modifications or cancellations of contracts or agreements or requests for authority to discuss a possible cooperative working arrangement.

**Subpart E—Procedures Upon Application or Review**

**§ 303.40 Determination of compliance.**

(a) Within 10 days after an application is filed pursuant to § 303.03, the Assistant Secretary will determine whether the application complies with the requirements of §§ 303.04 and 303.05.

(b) If the Assistant Secretary determines that the application is incomplete, he or she may issue a notice dismissing the application without prejudice. If the application is dismissed, and statutory time period for completion of proceedings will not begin to run until a completed application is filed.

**§ 303.41 Notice.**

(a) The Documentary Service Division shall compile a weekly list of all applications filed under §§ 303.04 and 303.05. The list shall include a description of the application, the docket number, date of filing, state that it may be reviewed in the Documentary Services Division, and indicate that interested parties may comment on the application or request a hearing within 21 days of the date of filing or other period as specified. The weekly list will normally be prepared on the following Monday, or as soon as possible, and will be posted on a public bulletin board in the Documentary Services Division. The list also shall be submitted for publication in the FEDERAL REGISTER.

(b) In appropriate case, particularly when an application concerns a matter of broad public significance, the Assistant Secretary may cause a notice of an application and request for public comment to be published separately in the FEDERAL REGISTER.

**§ 303.42 Comments on application.**

(a) Unless a different comment period is specified in the weekly list, or in a

notice of filing published in the FEDERAL REGISTER, any person may file comments, responses to the application, and/or a request for a hearing within 21 days of the filing of an application.

(b) Comments supporting or opposing an application or proposing conditions and responses thereto shall state with particularity the factual basis on which the person commenting relies, and provide affidavits or other material in support of the factual basis, if appropriate.

(c) Requests for a formal oral evidentiary hearing must set out with specificity the material issues of fact in dispute that cannot be resolved without such a hearing. Vague, unsupported allegations will not suffice.

**§ 303.43 Action following the comment period.**

(a) [Reserved]

(b) *Section 412 applications.* After the period for which comments, requests for a hearing or responses to an order to show cause are due concerning a section 412 application, the Assistant Secretary may proceed by order requesting further information or justification or by order of approval or disapproval or, in appropriate cases, may proceed by order to show cause or by order instituting a full evidentiary hearing.

(c) Notice to the public of any full evidentiary hearing or order to show cause concerning an application shall be made by publication in the FEDERAL REGISTER.

[50 FR 31142, July 31, 1985, as amended by Amdt. 303-2, 54 FR 33500, Aug. 15, 1989]

**§ 303.44 Show cause proceedings.**

If the Assistant Secretary determines that an application, or review of a previously granted application, will be considered in a show cause proceeding, a tentative decision shall be issued inviting interested persons to show cause why the tentative decision should not be made final. Interested persons may respond to the order within the time specified in the order. Replies to such responses shall be permitted within the time specified in the order. Persons wishing to introduce additional facts into the record should incorporate such information in their responses or re-

plies by affidavit. In the case of applications, show cause orders may be issued after the receipt of initial comments on the application.

**§ 303.45 Evidentiary hearings.**

(a) If the Assistant Secretary determines that an application, or review of a previous granted application, should be the subject of a full evidentiary hearing, he or she shall issue an order so stating. The term "full evidentiary hearing" includes any hybrid format set out in the instituting order. This order shall set forth the issues that are to be considered in such hearing.

(b) After the issuance of an order for a full evidentiary hearing, the Chief Administrative Law Judge shall promptly appoint an Administrative Law Judge to conduct such hearing in accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556, and the Rules of Practice in part 302 of this chapter.

(c) The applicants and the Assistant General Counsel for Aviation Enforcement and Proceedings shall be parties in any full evidentiary hearing held under these regulations. The Assistant Attorney General, Antitrust, shall be a party upon notice filed with the Administrative Law Judge. Other persons may intervene as parties as provided by § 302.15 of this chapter.

(d) Within the time specified in the order instituting the full evidentiary hearing, the Administrative Law Judge shall recommend to the Assistant Secretary that the application be approved or denied or that the previously granted exemption approval or immunity should be terminated or continued in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing record, and shall include a statement of the Administrative Law Judge's findings and conclusions, and the reasons or basis therefore, or all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be served on each party.

(e) Within 10 days after the date the Administrative Law Judge serves his or her recommendation, any party may file written exceptions to the recommendation for consideration by the

Assistant Secretary. Within 21 days after the service date of the judge's recommendation, any party may file a brief in support of or in opposition to any exceptions. This period may be altered by order of the Assistant Secretary, who may also authorize the filing of reply briefs.

**§ 303.46 Decision by the Assistant Secretary.**

The Assistant Secretary shall decide, on the basis of the record and in accordance with the procedures prescribed in part 302 of this chapter, whether to grant or deny, in whole or in part, the application. A copy of the Assistant Secretary's final decision shall be served on all parties.

**PART 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS**

Sec.

- 305.1 Applicability.
- 305.2 Definition.
- 305.3–305.4 [Reserved]
- 305.5 Initiation of investigation.
- 305.6 Appearance of witnesses.
- 305.7 Issuance of investigation subpoenas.
- 305.8 [Reserved]
- 305.9 Rights of witnesses.
- 305.10 Nonpublic character of proceedings.
- 305.11 Procedures after investigation.
- 305.12 Motions to quash or modify an investigation subpoena.

AUTHORITY: Secs. 202, 204, 411, 415, 1001, 1002, 1004, 1007, Pub. L. 85–726, as amended; 72 Stat. 742, 743, 770, 771, 788, 792, 796 (49 U.S.C. 1322, 1324, 1381, 1385, 1481, 1482, 1484, 1487; 5 U.S.C. 555, 556).

SOURCE: Docket No. 82, 50 FR 2421, Jan. 16, 1985, unless otherwise noted.

**§ 305.1 Applicability.**

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to

compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of Title IV or sections 101(3), 1002, 1003, or 1108(b) of the Act, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the U.S. Government, the District of Columbia, or the several States and their political subdivisions.

**§ 305.2 Definition.**

For the purpose of, and as used in this part, the term *investigation* means a non-adjudicatory, informal nonpublic investigation for the purpose of determining whether formal enforcement action should be instituted with respect to alleged violations of law.

**§§ 305.3–305.4 [Reserved]**

**§ 305.5 Initiation of investigation.**

An investigation may be initiated by order of the Department. Attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys, administrative law judges and the DOT decisionmaker are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Department.

**§ 305.6 Appearance of witnesses.**

Witnesses may be required to appear before any administrative law judge for the purpose of receiving their testimony or receiving from them documents or other data relating to any subject under investigation. Such testimony shall be mechanically or stenographically recorded, and a transcript thereof shall be made and incorporated in the record of the investigation.