

## § 385.21

report and other information developed during the audit.

(d) Require submission by carriers of special statements necessary to an explanation of any carrier accounting practice.

[Docket No. T-1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

### § 385.21 Authority of the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration.

The Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, has authority to:

(a) Approve and order the payment of refunds of filing fees paid under § 389.27(b) of this chapter when such refunds have been authorized by either the Director, Office of Aviation Analysis, or the Director, Office of International Aviation.

(b) Pay from appropriated funds all properly documented claims consistent with Treasury, OMB, GAO, and DOT policies.

(c) Make minor or routine adjustments to payments based on audit reports prepared by the Inspector General, and through routine internal examinations of claims and vouchers.

(d) Design air carrier subsidy claim forms for small community service under 49 U.S.C. 41737.

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985. Redesignated and amended by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

## Subpart C—Procedure on Review of Staff Action

### § 385.30 Persons who may petition for review.

Petitions for review may be filed by the applicant; by persons who have availed themselves of the opportunity, if any, to participate in the matter at the staff action level; and by persons who have not had opportunity to so participate or show good and sufficient cause for not having participated: *Provided*, That such persons, other than the applicant, disclose a substantial in-

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terest which would be adversely affected by the respective staff action.

[Docket No. T-1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

### § 385.31 Petitions for review.

(a) *Time for filing.* Petitions for review shall be filed and served within seven (7) days after the date of the staff action to which they relate, but a different period may be fixed in such staff action consistent with effective preservation of the right to petition for discretionary review and the exigencies of the situation.

(b) *Contents.* Petitions for review shall demonstrate that (1) a finding of material fact is clearly erroneous; (2) a legal conclusion is contrary to law, Department rules, or precedent; (3) a substantial and important question of policy is involved; (4) a prejudicial procedural error has occurred; or (5) the staff action is substantially deficient on its face. The petition shall briefly and specifically state the alleged grounds for review and the relief sought. If persons who participated at the staff action level set forth any new facts, arguments, or other new matter, an explanation must be furnished as to why said matter was not previously adduced at the staff action level. In the absence of a valid explanation, the Department may disregard such new matter.

(c) *Form and filing.* Petitions shall comply with the form and filing requirements of §§ 302.3 and 302.4 of this chapter. (Rules of practice in Economic Proceedings). Petitions shall not exceed 10 pages in length. A greater length, however, may be specified in the staff action taken. The petitions shall be accompanied by proof of required service. However, persons who seek review of a civil penalty proposed by the Assistant General Counsel for Aviation Enforcement and Proceedings pursuant to § 385.15(a) may submit their request therefor by letter to the Department with a copy to the Assistant General Counsel for Aviation Enforcement and Proceedings and need not comply with the above form and filing requirements.

(d) *Service.* A petition filed by a person other than the applicant shall be

served on the applicant. Petitions shall also be served on any persons who have served documents on the petitioner at the staff action level; and on such other persons as may be directed by the Department or the staff member who took the action to be reviewed.

(e) *Answers.* The applicant and such other persons as disclose a substantial interest which would be adversely affected by the relief sought in the petition may, within seven (7) days after filing the petition, file an answer thereto. A different period for the filing of answers may be fixed in the staff action. Such answers shall comply with the form and filing requirements applicable to petitions and shall be served on the applicant and any other person who has theretofore served a document in the matter on such respondent.

[Docket No. T-1, 49 FR 50985, Dec. 31, 1984. Redesignated and amended by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996; 65 FR 6457, Feb. 9, 2000]

#### § 385.32 Effective date of staff action.

Unless, within the time provided by or pursuant to this regulation, a petition for review is filed or the Department gives notice that it will review on its own motion, staff action shall, without further proceedings, be effective and become the action of the Department upon the expiration of such period. A timely petition for review filed in accordance with the provisions of this section, or notice given by the Department of review on its own motion, shall stay the staff action pending disposition by the Department, unless the Department determines otherwise or unless the staff action provides otherwise in accordance with subpart A of this part. However, in cases where the Department's regulations provide that permissions or approvals are granted, or that other legal effects result, within a stated period from the filing with the Department of a prescribed document, unless the Department gives notice to the contrary or takes other action within said period, such notice given or action taken by a staff member under delegated authority shall toll the running of such period. A timely petition for review of staff action which is not stayed by its filing which is received after or not acted upon be-

fore the effective date of the action shall be entertained and disposed of on its merits as a petition for reconsideration.

[Docket No. T-1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

#### § 385.33 Review by the staff.

Where a petition for review is duly filed, the staff member may, upon consideration of all documents properly filed, reverse his or her decision. Except in the case of Administrative Law Judges, action taken by a staff member other than an office head or Assistant General Counsel may be reversed by the respective office head or Assistant General Counsel who is in the supervisory chain of command with respect to the staff member who took the initial action. If the initial action is reversed, the petition for review will not be submitted to the Reviewing Official. Staff action reversing the initial action shall be subject to petition for Department review as any other staff action.

[Docket No. T-1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

#### § 385.34 Decision by the Reviewing Official.

(a) *Decline of right to review.* If the Reviewing Official declines the right to exercise discretionary review, the staff action stayed by the petition for review shall become effective on the second business day following the date of service of the order, unless the order provides otherwise.

(b) *Exercise of right to review.* The Reviewing Official will exercise his or her discretionary right of review either upon petition or on his or her own motion. The Reviewing official may by order provide for interlocutory relief pending his or her decision on the merits and may limit the issues on review. The Reviewing Official may affirm, modify or set aside the staff action, may order the matter remanded, or may order further submittals or other proceedings before making a decision on the merits. In case the Reviewing Official affirms the staff action, staff action stayed by the petition for review shall become effective on the second