

(f) The inspections and replacement shall be done in accordance with the following service document:

Document No.	Pages	Date
TCM MSB No. MSB94-9. Total pages: 2.	1-2	Oct. 21, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438-3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 13, 1995.

Issued in Burlington, Massachusetts, on February 8, 1995.

**James C. Jones,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 95-4124 Filed 2-23-95; 8:45 am]

BILLING CODE 4910-13-P

## Office of the Secretary

### 14 CFR Parts 300 and 385

[Docket No. 48582]

RIN 2105-AB89

### Rules of Conduct in DOT Proceedings

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation is amending its procedural regulations to permit Department staff to communicate informally with applicants and any objectors or other commenters in the investigation stage of docketed air carrier initial certificate application and continuing fitness cases (collectively referred to as "fitness cases") where the issues are limited solely to fitness and/or U.S. citizenship. Such communications may be initiated only by Department career staff for the purpose of clarifying information filed, or by an applicant or other interested party upon grant of a limited waiver of the regulations in order to engage in substantive communication with Department staff. In other respects, the Department's current *ex parte* restrictions will continue to govern substantive communications both before and after a show-cause order or an order instituting a formal proceeding has been issued. The amendment being

promulgated differs from that proposed in the Notice of Proposed Rulemaking (NPRM) in that the latter did not restrict the permitted *ex parte* communications to those initiated by Department staff or by other interested persons only pursuant to a waiver. The amendment will give the Department an added degree of flexibility in seeking information from all interested parties and will decrease the burden on applicants as well as objectors and other commenters. However, it will still provide those parties a fair and complete opportunity to be heard and ensure an adequate record for the proceeding.

**EFFECTIVE DATE:** The rule shall become effective on March 27, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Carol A. Woods, Air Carrier Fitness Division, X-56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 30, 1992, the Department issued an NPRM (58 FR 516, January 6, 1993) to amend its procedural regulations (14 CFR Part 300) to permit Department staff to communicate informally with applicants and any objectors or other commenters in docketed cases involving determinations of air carrier fitness and/or U.S. citizenship only, during the initial investigation stages before the issuance of a show-cause order or an order instituting a formal proceeding. After the issuance of either of those orders, the Department's current *ex parte* restrictions would apply.

The amendment was designed to eliminate unnecessary delays and complications in processing initial certificate applications and docketed continuing fitness cases that arise because, under the current rule (14 CFR 300.2), the Department may not discuss informally, either orally or in writing, substantive aspects of the cases with the applicants or objecting parties once a written objection is filed. Instead, the Department's staff routinely goes through the burdensome task of putting all of its questions in writing, filing them in the docket, and serving them on all parties. The applicant must likewise respond in writing through the docket, with copies to all parties. Often responses to staff questions need clarification or spawn further inquiries. Moreover, questions asked of the applicant by the Department's staff may themselves require clarification before a proper response can be made. As a

result, often matters that could be cleared up in minutes by telephone or in a meeting can drag on for days or weeks solely due to the procedures of the on-the-record communications required under the current rules. Overall, the process is often cumbersome and time-consuming.

Carrier applicants are not the only persons who suffer as a result. For example, the Department's staff may not under present *ex parte* rules ask simple questions of an objector in an effort to verify the facts contained in the filing objecting to the application without similar written procedures. The amendment would allow the Department the flexibility to seek clarifications and additional information from interested persons in an informal manner, thereby relieving all parties of the burden of having to file such communications in the docket and serve them on all interested persons. Since the current *ex parte* communication rules would continue to apply after the issuance of a show-cause order or an order instituting formal procedures, the amendment would ensure that all parties would have a fair and complete opportunity to be heard and that an adequate record would be assembled for the proceeding.

Comments on the NPRM were received from American Airlines, Inc. (American), Delta Air Lines, Inc. (Delta), United Air Lines, Inc. (United), and the Regional Airline Association.

**Summary of Comments**

The Regional Airline Association stated that it supported the Department's proposed amendment to Part 300. American declared that it had no objection to the proposed change if limited to docketed initial fitness proceedings. Delta objected to *ex parte* communications in any "controversial cases involving significant issues of law and/or public policy." United stated that it did not object to a change allowing *ex parte* communications for the purpose of clarifying factual issues in routine fitness cases, such as financial documents, personnel backgrounds, or safety violations, but maintained that *ex parte* communications were not appropriate in any type of fitness proceeding that involved citizenship issues.

Delta declared that the proposed change would allow "secret" communications between the Department and the subjects of fitness reviews in contested, controversial cases where prohibitions on such communications are particularly needed to protect the rights of all parties and the integrity of the Department's

procedures. Delta suggested that the Department add a provision to § 300.2 allowing an applicant or respondent in a docketed case in which an objection has been received to request a limited waiver of § 300.2(a) to permit *ex parte* communications with Department staff prior to the issuance of a show-cause order or an order instituting further procedures. Such a request would be filed in the docket, with a copy to each party, so that interested persons could comment on the appropriateness and scope of the proposed waiver.

American, Delta, and United also provided comments and suggestions concerning the use of *ex parte* communications in undocketed continuing fitness reviews, particularly those involving citizenship issues.<sup>1</sup> Those remarks, however, are beyond the scope of this rulemaking, which is confined to docketed initial and continuing fitness cases.

### Discussion

After re-examining the need to ensure full appearance of fairness in our proceedings and the comments received on the NPRM, we now consider that the relaxation proposed in the NPRM was overly broad, going beyond the relief from the restrictions that we were seeking. As a remedy, we have decided to add two limitations to the change we proposed.

First, we will limit the exemption for *ex parte* communications allowed before the issuance of a show-cause order or order instituting a formal

<sup>1</sup> The three carriers all asserted that *ex parte* communications were not appropriate in continuing fitness reviews of major carriers where their citizenship was at issue, even if the case was undocketed. Delta recommended that the Department amend Part 302 of its procedural regulations to require the issuance of a public notice by the Department upon receiving continuing fitness information concerning, or a request for a disclaimer of jurisdiction or approval of a proposed transaction involving, the acquisition of potential control over a U.S. carrier by a foreign air carrier (e.g., by acquiring more than 15 percent of a U.S. carrier's voting interest and/or more than 25 percent of its total equity). If, in response to the public notice, any interested person were to file an answer requesting the establishment of a public proceeding to consider issues of fact, law or policy with respect to the proposed transaction, the Department would publish an order instituting the public proceeding.

United urged the Department to establish standards for determining when a continuing fitness proceeding will be docketed and, when not docketed, what *ex parte* rules will apply. United further recommended that the Department establish either a written or an oral public proceeding in any fitness review that involves some type of adjudication, although, in cases not involving citizenship issues, the Department may conduct fact-finding on an *ex parte* basis, but should institute a public proceeding, and issue a reviewable order, if any "substantive issue" relative to a carrier's fitness is discovered.

proceeding to those initiated by Department career staff for the purpose of investigating or clarifying information filed by the applicant or other interested person, and responses thereto. Such an exception corresponds to that granted to Department staff in § 300.2(c)(3) in connection with the investigation phase of enforcement proceedings.

Second, we believe that there is merit in Delta's suggestion that if an applicant or other interested person needs to discuss a substantive matter with Department staff involving a docketed proceeding in which an objection has been received, but before the issuance of a show-cause order or an order instituting further procedures, that person should be able to file in the docket and serve on all parties, using the guidelines set forth in Rule 18 (14 CFR 302.18), a request for a waiver from § 300.2(a), setting forth the scope of the proposed waiver and the reasons for the request. Any interested person could then file an answer to the waiver request, commenting on its merits or scope, which comments the Department would consider in ruling on the request. The responsibility for ruling on such waiver requests would be delegated to the Director of the Office of Aviation Analysis, Office of the Assistant Secretary for Aviation and International Affairs.

By thus limiting the instigation of *ex parte* communications, we intend to forestall even the appearance of improper influence on the Department's decision-making process. However, this limitation by no means precludes any interested person from providing unsolicited written comments containing relevant information concerning the initial or continuing fitness or citizenship of an applicant or air carrier at any time, including in response to either an application or to any show-cause order that may be issued, whether or not a public proceeding is in progress. If any such information is provided, it will be placed in any open docket and may be discussed in a show-cause or other order.

### Conclusion

After carefully weighing the comments provided in response to the NPRM, and for the reasons discussed above, we have decided to finalize the proposed amendment with the changes described above. We are also amending 14 CFR Part 385 to add a new subparagraph (§ 385.14(p)) stating the authority of the Director of the Office of Aviation Analysis to approve or deny requests for waivers from § 300.2(a) in docketed air carrier initial certificate

application and continuing fitness cases.

### Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of this amendment and has determined that they are not "significant" within the meaning of Executive Order 12866. It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

### DOT Regulatory Policies and Procedures

The amendment is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies; rather, it is being made solely for the purpose of facilitating communication between Department staff and the air carriers subject to its regulatory oversight. The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. As a result of the adoption of this amendment, fitness application costs to carriers and costs to opposing parties should be slightly lower due to the less formal procedures that would replace the current procedures.

### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities. For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. Based upon this evaluation, the Department certifies that the amendment would not have a significant economic impact on

a substantial number of small entities. As stated above, the Department believes that the amendment would create a slight economic benefit for parties in fitness cases.

**Executive Order 12612 (Federalism)**

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**National Environmental Policy Act**

The Department has also analyzed this rule for the purpose of the National Environmental Policy Act. The rule would not have any significant impact on the quality of the human environment.

**Paperwork Reduction Act**

There are no reporting or recordkeeping requirements associated with this rule.

**List of Subjects**

14 CFR Part 300

Administrative practice and procedure, Conflict of interests.

14 CFR Part 385

Organization and functions (Government agencies).

For the reasons set out in the Supplementary Information, title 14, chapter II of the Code of Federal Regulations is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 is revised to read as follows:

**Authority:** 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, and 465.

2. Section 300.2 is amended by adding new paragraph (c)(10) to read as follows:

**§ 300.2 Prohibited communications.**

\* \* \* \* \*

(c) \* \* \*

(10) Information given at the request of a DOT career employee in the course of investigating or clarifying information filed, or pursuant to a waiver granted to an applicant or other interested person, in docketed proceedings involving determinations of fitness and/or U.S.

citizenship only, for that portion of the proceeding that precedes the issuance of a show-cause order or an order instituting a formal proceeding. Motions for such waivers and any answers shall be filed in the applicable docket in accordance with § 302.18 of the Department's Procedural Regulations (14 CFR 302.18) and served upon all parties to the proceeding.

\* \* \* \* \*

**PART 385—[AMENDED]**

3. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. chapters 401, 411, 413, 415, 417, and 419.

4. Section 385.14 is amended by adding new paragraph (p) to read as follows:

**§ 385.14 Authority of the Director, Office of Aviation Analysis.**

\* \* \* \* \*

(p) Approve or deny requests for waivers from 14 CFR 300.2(a) in docketed air carrier initial certificate application and continuing fitness proceedings.

\* \* \* \* \*

Issued in Washington, DC, on February 16, 1995.

**Patrick V. Murphy,**  
*Acting Assistant Secretary for Aviation and International Affairs.*  
[FR Doc. 95-4328 Filed 2-23-95; 8:45 am]  
BILLING CODE 4910-62-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 943**

[Docket 950207042-5042-01]

RIN 0648-AB49

**Flower Garden Banks National Marine Sanctuary Regulations**

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule.

**SUMMARY:** This document adopts as final regulations without change the interim final portion of regulations implementing the designation of the Flower Garden Banks National Marine Sanctuary, published on December 5, 1991 (56 FR 63634).

**EFFECTIVE DATE:** March 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Edward Lindelof, Gulf and Caribbean Regional Manager, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC-4, Silver Spring, MD 20910 (301/713-3137).

**SUPPLEMENTARY INFORMATION:** Section 101 of P.L. 102-251, signed into law on March 9, 1992, provides that the designation of the Flower Garden Banks National Marine Sanctuary took effect on January 17, 1992. Both final and interim final regulations implementing the designation were published on December 5, 1991 (56 FR 63634); NOAA invited comments on the interim final regulations to be submitted in writing on or before February 3, 1992. NOAA received one comment, which is discussed below under Background. The comment results in no change.

Accordingly, the interim final portions of 15 CFR part 943 (§ 943.3(a)(5), (6), (7), (9), (12), (14), and (15), § 943.5 (a)(1), (11) (12) (13), and (e), and § 943.6, published at 56 FR 63634, December 5, 1991) are adopted as final regulations without change.

**I. Background**

As indicated above, NOAA invited comments on the interim final regulations to be considered if submitted in writing on or before February 3, 1992. The following comment was received by NOAA in response to the interim final regulations prohibiting exploring for, developing or producing oil, gas or minerals within a no-activity zone (15 CFR § 943.5(a)(1)).

(1) *Comment:* The commenter recommends that the prohibition against exploring for, developing or producing oil, gas or minerals within a no-activity zone not apply to geophysical surveys and seismic exploration.

*Response:* The prohibition against exploring for, developing or producing oil, gas or minerals within a no-activity zone does not apply to geophysical surveys and seismic exploration. However, seismic techniques involving possessing or using explosives, or releasing electrical discharges, are prohibited in the Sanctuary by regulation 15 CFR § 943.5(a)(14).

The use of air guns involved in seismic surveys in the Flower Garden Banks National Marine Sanctuary has been listed for possible regulation, so that if the use of air guns in seismic surveys is later demonstrated to have an adverse impact on Sanctuary resources, additional regulations can be proposed. If such regulations are eventually proposed, the public will have an