

SUBCHAPTER E—ORGANIZATION

PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

Subpart A—General Provisions

§ 385.1 Definitions.

Department means Department of Transportation.

Petition for review means a petition asking the appropriate Reviewing Official to exercise his or her discretionary right of review of staff action.

Precedent means applicable judicial decisions and decisions by the Department, or by the Board where consistent with Department policy.

Reviewing Official means the Assistant Secretary for Aviation and International Affairs, the General Counsel, or the Director of the Bureau of Transportation Statistics, as appropriate to the subject matter under review, but not with regard to Deputy General Counsel and Administrative Law Judge decisions made under this part.

Staff action means the exercise of a function under Subparts I, II and IV of Subtitle VII of Title 49 of the United States Code (Transportation) by a staff member pursuant to assignment under this part.

Staff members means officers and employees of the Department who are assigned authority under this part.

Statute means Subtitle VII of Title 49 of the United States Code (Transportation).

[Docket No. T-1, 49 FR 50985, Dec. 31, 1984, as amended by Amdt. 1-261, 59 FR 10061, Mar. 3, 1994; 60 FR 66726, Dec. 26, 1995; Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.2 Applicability.

This part describes the organization of the Department insofar as, pursuant to authority conferred on it by section 40113 of the Statute, the Department has adopted rules herein or elsewhere which make continuing assignments of authority with respect to any of its functions of making orders or other determinations, many of which are not required to be made on an evidentiary record upon notice and hearing or which are not the subject of contest, and Department personnel have been assigned to perform such functions.

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AUTHORITY: 49 U.S.C. Subtitle I, Chapters 401, 411, 413, 415, 417.

SOURCE: Docket No. T-1, 49 FR 50985, Dec. 31, 1984, unless otherwise noted.

Delegations by the Secretary of Transportation to Secretarial Officers and the Director, Bureau of Transportation Statistics (BTS) of functions under Subparts I, II, and IV of the Statute appear in 49 CFR part 1. This part also sets forth the procedures governing discretionary review by the appropriate Reviewing Official of action taken under such assignments. Nothing in this part shall be construed as precluding the Department from issuing, by appropriate order, temporary delegations of authority with respect to any functions described in this part or with respect to any other functions which can be lawfully delegated.

[Docket No. T-1, 49 FR 50985, Dec. 31, 1984, as amended at 60 FR 66726, Dec. 26, 1995; Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.3 Scope of staff action.

Applications for relief which, pursuant to this part, may be granted by staff members under assigned authority, and proceedings on such requests shall be governed by applicable rules in the same manner as if no assignment had been made (see § 385.5). In such proceedings, each staff member may determine any procedural matters which may arise, including, inter alia, service of documents on additional persons; filing of otherwise unauthorized documents; waivers of procedural requirements; requests for hearing; requests for additional information; dismissal of applications upon the applicant's request, moot applications, or incomplete or otherwise defective applications; and extensions of time. Such determinations, except those which would terminate the matter, shall be subject to review only in connection with review of the staff member's decision on the merits. The dismissal of incomplete or otherwise defective applications under authority set forth in this part shall be without prejudice except where under otherwise applicable law the time for making application has run out or where the defect is not corrected within a reasonable time fixed by the staff member. Under the authority assigned to the staff as set forth in this part to approve, disapprove, grant, or deny, relief may be granted or denied in part and grants may be made subject to lawful and rea-

sonable conditions. Moreover, where applicable, the authority to grant relief also includes authority to renew or extend an existing authorization.

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.4 Form of staff action.

Unless otherwise specified, staff action shall be by order or informal writing (letters, telegrams, decision marked on copy of application form, etc.). Such orders or informal writings shall contain a recital that action is taken pursuant to authority assigned herein, shall, in cases where there are "parties or interveners," or where there may be an adverse effect upon a person with a substantial interest, contain a brief reference to the right of aggrieved parties to petition the Reviewing Official for review pursuant to applicable procedural rules, including a statement of the time within which petitions must be filed (§ 385.51); shall state whether the filing of a petition shall preclude the action from becoming effective; and shall be in the name of the person exercising the assigned function. They shall contain all findings, determinations and conclusions which would be required or appropriate if they were issued by the Secretary. Upon request, the appropriate Department Official shall attest as Departmental action orders or informal writings issued pursuant to this part which have become the action of the Department (§ 385.52).

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.5 Procedures prescribed in other regulations.

Procedures set forth in this part do not supersede procedures applicable to matters on which decision has been assigned unless otherwise specifically provided herein: *Provided, however*, That any provisions in other regulations which provide for reconsideration of nonhearing determinations are not applicable to decisions made under authority assigned herein or to decisions made upon review thereof by the Reviewing Official.

§ 385.6 Referral to the Reviewing Official.

When the staff member finds that the public interest so requires, or that, with respect to other than matters requiring immediate action as hereafter specified, there will be insufficient time for discretionary review of his or her decision upon petition, the staff member shall, in lieu of exercising the authority, submit the matter to the Reviewing Official for decision. In any case in which the staff member finds that immediate action is required with respect to any matter assigned herein, the disposition of which is governed by prior precedent and policy, the staff member may take appropriate action and specify that the filing of a petition for review shall not preclude such action from becoming effective.

§ 385.7 Exercise of authority by superiors.

Any assignment of authority to a staff member other than the Chief Administrative Law Judge, the Administrative Law Judge, and the Deputy General Counsel, shall also be deemed to be made, severally, to each such staff member's respective superiors. In accordance with the Department's principle of management responsibility, the superior may choose to exercise the assigned power personally. Moreover, the Secretary may at any time exercise any authority assigned herein.

§ 385.8 Exercise of authority in "acting" capacity.

Unless the assignment provides otherwise, staff members serving in an "acting" capacity may exercise the authority assigned to the staff members for whom they are acting.

Subpart B—Assignment of Functions to Staff Members**§ 385.10 Authority of Chief Administrative Law Judge, Office of Hearings.**

The Chief Administrative Law Judge has authority to:

(a) Consolidate, upon recommendation of the Director, Office of International Aviation (or such staff member of the Office of International Aviation as he or she may designate), into

one proceeding cases involving the investigation of a tariff or of complaints concerned with related tariffs.

(b) With respect to matters to be decided after notice and hearing: (1) Dismiss applications or complaints (except those falling under subpart B of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint; (2) dismiss proceedings upon his or her finding that the proceeding has become moot or that no further basis for continuation exists; and (3) dismiss an application subject to dismissal as stale under part 302 of this chapter.

[49 FR 50985, Dec. 31, 1984, as amended at 55 FR 20448, May 17, 1990]

§ 385.11 Authority of the Administrative Law Judges, Office of Hearings.

The Administrative Law Judges, Office of Hearings, have authority to take the following actions in matters to which they are respectively assigned:

(a) Grant or deny intervention in formal proceedings.

(b) With respect to matters to be decided after notice and hearing, dismiss applications or complaints (except those falling under subpart B of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint.

(c) Grant requests for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(d) Approve or disapprove proposed settlements of enforcement proceedings submitted under § 302.215 of this chapter.

§ 385.12 Authority of the Director, Office of Aviation Analysis.

The Director, Office of Aviation Analysis, has authority:

(a) With respect to applications filed under section 41102 to engage in interstate or foreign scheduled or charter air transportation, section 41103 to engage in all-cargo air transportation, or section 41738 to engage in certain commuter air transportation:

(1) To issue an order stating the Department's intention to process the application through show-cause procedures or other expedited procedures, where that course of action is clear under current policy and precedent.

(2) To issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and where the Department has already found the applicant to be fit, willing and able to provide service of the same basic scope and character.

(3) To issue an order, subject to any Presidential review required under section 41307 of the Statute, making final an order to show cause issued under paragraph (a)(2) of this section, where no objections to the order to show cause have been filed.

(4) To issue an order dismissing an application:

- (i) When dismissal is requested or consented to by the applicant;
- (ii) For lack of prosecution; or
- (iii) When the application has become moot.

(5) To review Air Carrier Certificates and Operations Specifications issued by the Federal Aviation Administration to carriers that have been granted certificate or commuter air carrier authority, and information concerning those carriers' fitness to operate under that authority that emerged following the issuance of orders establishing their fitness, and—

(i) To amend orders issuing the certificate or commuter air carrier authority to advance the effective dates of the authority if the review is satisfactory;

(ii) To stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory;

(iii) To lift the stay of effectiveness imposed under paragraph (a)(5)(ii) of this section when the unsatisfactory conditions that required issuance of the stay have been resolved; or

(iv) To issue notices announcing the effective date of the certificate or commuter air carrier authority.

(b) To approve or deny applications of air carriers:

(1) For exemptions from section 41102 or 41103 of the Statute, and from orders issued thereunder, and from applicable regulations under this chapter where the course of action is clear under current policy or precedent.

(2) For waivers of the Department's filing fee requirements under part 389 of this chapter, in accordance with current policy or precedent.

(3) For relief under section 40109 of the Statute to hold out, arrange, and coordinate the operation of air ambulance flights as indirect air carriers in accordance with established precedent.

(c) To waive the deadlines in §377.10(c) of this chapter for filing applications for the renewal of temporary authorizations when, in the Director's judgment, the public interest would be served. The provisions of §377.10(d) of this chapter shall apply in the same manner as to a timely filed application.

(d) With respect to air carrier names:

(1) To register names and trade names of certificated and commuter air carriers pursuant to part 215 of this chapter.

(2) To reissue certificates issued under sections 41102 or 41103 of the Statute when revisions thereof are necessitated by a change in the name of a carrier, provided that no issue of substance concerning the operating authority of the carrier is involved.

(e) To approve, deny, or cancel registrations filed with the Department by air taxi operators and commuter air carriers pursuant to part 298 of this chapter.

(f) With respect to Canadian charter air taxi operations:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 294 of this chapter.

(2) To cancel, revoke, or suspend the registration of any Canadian charter air taxi operator using small aircraft registered under part 294 of this chapter that:

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(i) Filed with the Department a written notice that it is discontinuing operations;

(ii) No longer is designated by its home government to operate the services contemplated by its registration;

(iii) Holds a foreign air carrier permit under section 41302 to operate large aircraft charters between the United States and Canada;

(iv) Fails to keep its filed certificate of insurance current;

(v) No longer is substantially owned or effectively controlled by persons who are:

(A) Citizens of Canada;

(B) The Government of Canada; or

(C) A combination of both; or

(vi) No longer holds current effective Operations Specifications issued by the FAA.

(3) To grant or deny requests for a waiver of part 294 of this chapter, where grant or denial of the request is in accordance with current policy or precedent.

(g) To approve certificates of insurance filed with the Department on behalf of U.S. and foreign air carriers in accordance with the provisions of part 205 of this chapter.

(h) With respect to foreign air freight forwarders:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 297 of this chapter.

(2) To cancel the registration of any foreign air freight forwarder or foreign cooperative shippers association that files a written notice with the Department indicating the discontinuance of common carrier activities.

(3) To exempt the registrant from the requirement contained in §297.20 of this chapter that substantial ownership and effective control reside in citizens of the country that the applicant claims as its country of citizenship, where the course of action is clear under current precedent or policies.

(i) With respect to charter operations:

(1) To grant or deny requests for waiver of parts 207, 208, 212, 372, and 380 of this chapter, where grant or denial

of the request is in accordance with established precedent.

(2) To approve or disapprove direct air carrier escrow agreements filed pursuant to parts 207, 208, and 212 of this chapter.

(3) To reject or accept Public Charter prospectuses filed under part 380 of this chapter.

(4) With respect to the procedures for the registration of foreign charter operators under subpart F of part 380 of this chapter:

(i) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 380 of this chapter.

(ii) To notify the applicant that its application will require further analysis or procedures, or is being referred to the Assistant Secretary for Aviation and International Affairs for formal action.

(iii) To cancel the registration of a foreign charter operator if it files a written notice with the Department that it is discontinuing its charter operations.

(iv) To waive provisions of subpart F of part 380 of this chapter.

(j) With respect to mail rates:

(1) To issue show-cause orders proposing to make modifications of a technical nature in the mail rate formula applicable to temporary or final service mail rate orders.

(2) To issue final orders establishing temporary and final service mail rates:

(i) In those cases where no objection has been filed following release of the show-cause order, and where the rates established are the same as those proposed in the show-cause order; and

(ii) In those cases where it is necessary to make modifications of a technical nature in the rates proposed in the show-cause order.

(3) To issue final orders amending mail rate orders of air carriers to reflect changes in the names of the carriers subject to the orders.

(4) To issue a letter, in the case of air mail contracts filed with the Department under part 302 of this chapter against which no complaints have been filed, stating that the contract will not

be disapproved by the Department and may become effective immediately.

(k) With respect to essential air service proceedings:

(1) To establish procedural dates.

(2) To issue orders setting interim rates of compensation for carriers required to provide essential air service.

(3) To issue orders approving a carrier's alternate service pattern if:

(i) The resulting level of service at the eligible place would be equal to or greater than the level of service earlier determined to be essential for that place;

(ii) The community concerned does not object to the carrier's implementation of the alternate service pattern; and

(iii) The carrier is not receiving a subsidy for the service or implementation of the alternate service pattern would not increase the carrier's subsidy.

(4) To issue orders adjusting the operational and/or financial unit rates of the payout formula for a carrier receiving subsidy under section 41732 of the Statute where the adjustment will not increase the total amount of compensation that the carrier will receive.

(5) To renew, up to five times in succession, an order under section 41734 of the Statute to an air carrier to continue providing essential air service while the Department attempts to find a replacement carrier.

(6) To request service and subsidy proposals from carriers interested in providing essential air service to an eligible place that is not receiving essential air service and for which no appeal of its essential air service determination is pending.

(7) To request service and subsidy proposals from carriers interested in providing essential air service when no proposals were filed in response to a previous request for proposals.

(8) To issue final orders establishing interim or final subsidy rates under section 41732 or final adjustments of compensation for continued service under section 41732 in those cases where no objection has been filed to a show-cause order, and where the rates established are the same as or less than those proposed in the approved show-cause order.

(9) With respect to provisions for terminations, suspensions, or reductions of service under part 323 of this chapter:

(i) To require any person who files a notice, objection, or answer to supply additional information.

(ii) To require service of a notice, objection, or answer upon any person.

(iii) To accept late-filed objections or answers, upon motion, for good cause shown.

(iv) To extend the time for filing objections for answers, when the initial notice has been filed earlier than required under § 323.5.

[Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.13 Authority of the Director, Office of International Aviation.

The Director, Office of International Aviation, has authority to:

(a) Approve or deny applications for exemptions, where the course of action is clear under current policy or precedent:

(1) For air carriers, from chapter 411 of the Statute and from certificates and orders issued under that chapter;

(2) For foreign air carriers, from section 41301 and from permits and related orders issued under chapter 413;

(3) For air carriers and foreign air carriers, from chapter 415 and from orders issued and tariffs filed under that chapter; and

(4) From orders and applicable regulations under this chapter.

(b) With respect to applications for certificates of public convenience and necessity under section 41102 and foreign air carrier permits under section 41302:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and the applicant has already been found fit, willing, and able by the Department to provide service of the same basic scope and character;

(2) Issue an order stating the Department's intention to process the application through show-cause procedures;

(3) Issue an order, subject to Presidential review under section 41307, to make final an order to show cause

issued under the circumstances of paragraph (b)(1) of this section, where no objections to the show-cause order have been filed; and

(4) Reissue certificates of public convenience and necessity and foreign air carrier permits when revisions are necessitated by a change in the name of the carrier or of points specified, provided that no issue of substance concerning the operating authority of a carrier is involved.

(c) With respect to an application under section 41102 for a certificate to engage in foreign scheduled air transportation, issue an order instituting an investigation of the applicant's fitness and other issues related to the application, where no person has already filed an objection to the application and the investigation will be conducted by oral hearing procedures.

(d) Issue an order to show cause why a foreign air carrier permit should not be revoked under section 41304 when:

(1) The government of the permit holder's home country represents that it does not object to revocation of the permit; and

(2) The permit holder—

(i) Has ceased operations; or

(ii) No longer holds valid authority from its own government to operate the services in its permit.

(e) Approve or disapprove requests by foreign air carriers for authorizations provided for, or waivers of restrictions contained, in any agreement or in any permit or order of the Department, when no person disclosing a substantial interest objects or where the course of action is clear under current policy or precedent.

(f) Waive the deadlines in §377.10(c) of this chapter for filing applications for renewal of unexpired temporary authorizations when, in the Director's judgment, the public interest would be served. The provisions of §377.10(d) of this chapter shall apply in the same manner as to a timely filed application.

(g) Extend the time allowed for action on a complaint of unfair or discriminatory practices, filed under section 41310, for an additional period or periods of 30 days each, not to exceed the 180th day after filing unless that

deadline has been waived by the complainant.

(h) Grant or deny applications for statements of authorization under parts 207, 208, and 212 of this chapter, and requests for waivers of the requirements of parts 207, 208, and 212 of this chapter, where grant or denial of the request is in accordance with current policy or precedent.

(i) Approve or disapprove charter trips by foreign air carriers, and those by air carriers that are predominantly in foreign air transportation, when prior authorization is required by:

(1) Any provision of this chapter; or

(2) An order of the Department.

(j) Approve or disapprove requests by foreign air carriers for waivers of the 30-day advance filing requirement for proposed schedules whose filing the Department has ordered under part 213 of this chapter.

(k) Approve, when no person disclosing a substantial interest objects, or disapprove requests by foreign air carriers for special authorizations provided for in part 216 of this chapter.

(l) With respect to applications for statements of authorization to conduct intermodal cargo services under part 222 of this chapter:

(1) Approve applications under part 222 of this chapter where no person with a substantial interest raises objections citing specific facts of nonreciprocity or of restraints on competition by U.S. air carriers;

(2) Reject applications under part 222 of this chapter where there is no agreement by the United States permitting the proposed services; or

(3) Require that an applicant under part 222 of this chapter submit additional information.

(m) Approve or disapprove issuance of foreign aircraft permits provided for in part 375, subparts E and H, of this chapter.

(n) Grant or deny applications of foreign air carriers for renewal of emergency exemptions granted under 49 U.S.C. 40109(g).

(o) Grant or deny applications by air carriers and foreign air carriers under part 389 of this chapter for waivers of the Department's filing fee requirements, in accordance with current policy or precedent.

(p) Determine matters in proceedings under section 40109 and chapters 411, 413 and 415, that have not been set for oral evidentiary hearing, in addition to those authorized under §385.3, such matters to include, *inter alia*, filing times, service of documents, submissions of additional information, filing of otherwise unauthorized documents, access to information for which confidential treatment has been requested, rejection of incomplete or otherwise defective applications, and solicitation of applications for authority.

(q) Approve or disapprove applications under part 223 of this chapter for permission to furnish free or reduced-rate foreign air transportation.

(r) With respect to International Air Transport Association (IATA) agreements filed with the Department pursuant to sections 41309 and 41308 of the Statute, or pursuant to Civil Aeronautics Board Order E-9305 of June 15, 1955:

(1) Issue orders approving or disapproving IATA agreements relating to fare and rate matters under section 41309, and granting or denying anti-trust immunity under section 41308, where the course of action is clear under current policy and precedent.

(2) Issue orders describing filed agreements, establishing procedural dates for submission of justification, comments and replies, which support or oppose agreements, and prescribing the particular types of data to be included in such submission.

(s) Reject any tariff, supplement, or revised page that is filed by any U.S. air carrier or foreign air carrier, and that is subject to rejection because it is not consistent with chapter 415 of the Statute or with part 221 or 222 of this chapter. Where a tariff, supplement or loose-leaf page is filed on more than 60 days' notice and is not rejected within the first 30 days (including the filing date), it shall not be rejected after such 30-day period under this authority unless the issuing carrier is given an opportunity to remove the cause for rejection by the effective date, by special tariff permission if necessary, and fails to take such corrective action.

(t) Approve or disapprove any application for special tariff permission

under part 221, subpart P, of this chapter to make tariff changes upon less than statutory notice.

(u) Approve or disapprove applications for waiver of part 221 of this chapter.

(v) Institute an investigation of, or institute an investigation and suspend the effectiveness of, a tariff or change in a tariff which:

(1) Is substantially similar to a prior tariff under investigation or suspension; and

(2) Is filed by or on behalf of one or more of the parties to the prior tariff; and

(3) Is filed within 90 days after the expiration, modification, or cancellation of the prior tariff, or within 90 days after the effective date of an order requiring its cancellation or modification.

(w) In instances when an investigation of a tariff is pending, or the tariff is under suspension, or when a complaint requesting investigation or suspension of a tariff has been filed:

(1) Permit cancellation of the tariff; or

(2) If the grounds for the investigation or complaint have been removed through cancellation, expiration or modification of the tariff, either dismiss the investigation or complaint, or terminate the suspension.

(x) Extend the period of suspension of a tariff when the proceedings concerning the lawfulness of such tariff cannot be concluded before the expiration of the existing suspension period, provided that the aggregate of such extensions may not be for a longer period than permitted under section 41509.

(y) Cancel the suspension of and/or dismiss an investigation of a tariff relating to service predominantly in foreign air transportation where the course of action is clear under current policy and precedent.

[Doc. No. OST-96-1268, 61 FR 19169, May 1, 1996]

§ 385.14 Authority of the General Counsel.

(a) The General Counsel has authority to:

(1) Issue proposed or final regulations for the purpose of making editorial

changes or corrections in the Department's rules and regulations to carry out Titles IV and X of the Act, with the concurrence of the staff offices primarily responsible for the parts or sections involved: *Provided*, That any final regulation so issued shall have an effective date not less than 20 days after its date of publication in the FEDERAL REGISTER, and shall include a brief reference to the review procedures established in subpart C of this part.

(2) Where a petition for review is duly filed, reverse any rulemaking action taken by him or her pursuant to paragraph (a) of this section by withdrawing a proposed or final regulation issued thereunder, in which case the petition for review will not be submitted to the Reviewing Official involved. (Such a withdrawal is not subject to the review procedures of subpart C of this part.)

(3) Issue, upon request therefor, interpretations of facts bearing upon disqualifications of former members and employees, and Department employees under §300.13 or §300.14 of this chapter (Procedural Regulations).

(4) Issue orders deferring action until after oral argument on motions submitted by parties subsequent to the issuance of an Administrative Law Judge's initial or recommended decision.

(5) Reissue existing regulations for the purpose of incorporating prior amendments adopted by the Department.

(b) To the extent that a hearing case is involved, the authority assigned to the General Counsel in paragraph (a) of this section shall not be reassigned to the Deputy General Counsel or exercised by the Deputy General Counsel in the capacity of Acting General Counsel.

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

§385.15 Authority of the Deputy General Counsel.

The Deputy General Counsel has authority to:

(a) Compromise any civil penalties being imposed in enforcement cases.

(b) Issue orders initiating and terminating informal nonpublic investigations under part 305 of this chapter (Procedural Regulations).

(c) Issue orders requiring air carriers to prepare and submit within a specified reasonable period, special reports, copies of agreements, records, accounts, papers, documents, and specific answers to questions upon which information is deemed necessary. Special reports shall be under oath whenever the Deputy General Counsel so requires.

(d) Institute and prosecute in the proper court, as agent of the Department, all necessary proceedings for the enforcement of the provisions of the act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof. Any action taken by the Deputy General Counsel, pursuant to the authority of this section shall not be subject to the review procedures of this part.

(e) Make findings regarding the reasonable necessity for the application of the Department's authority to obtain access to lands, buildings and equipment, and to inspect, examine and make notes and copies of accounts, records, memorandums, documents, papers and correspondence of persons having control over, or affiliated with, any person subject to regulation under Titles IV or X of the Act, through issuance of an appropriate order, letter or other transmittal.

(f) Issue orders denying or granting conditional or complete confidential treatment of information supplied by any person to the Office of Aviation Enforcement and Proceedings. Confidential treatment may only be granted upon a finding that, if the information were in the Department's possession and a Freedom of Information Act (FOIA) request were made for the information:

(1) At the time of the confidentiality request, the FOIA request would be denied on the basis of one or more of the FOIA exemptions; and

(2) At any later time, the FOIA request would also be denied, absent a material change in circumstances (which may include a demonstration

that the asserted exemption does not apply).

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

§ 385.16 Heads of Offices and Assistant General Counsels.

The heads of Offices and Assistant General Counsels have the authority to:

(a) Grant requests for permission to withdraw petitions, applications, motions, complaints, or other pleadings or documents which the respective Office has responsibility for processing where such authority has not otherwise been assigned in this regulation.

(b) Grant extensions of time for filing of documents or reports which are required to be filed by regulation or Department order and which reports or documents the respective Office has the responsibility for processing.

(c) Grant waivers of the environmental procedures set by Department order in any proceeding or portion of a proceeding dealing with environmental matters.

(d) Establish procedures on a case-by-case basis for environmental proceedings to ensure compliance with applicable law.

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

§ 385.17 Authority of the Assistant General Counsel for Regulation and Enforcement.

The Assistant General Counsel for Regulation and Enforcement has authority to:

(a) Call public meetings in pending rulemaking proceedings,

(b) Issue a notice suspending the effective dates of final regulations issued by the General Counsel pending Departmental determination of review proceedings instituted thereon, whether by petition or upon order of the Department. (Such a notice is not subject to the review procedures of subpart C of this part.), and

(c) Approve or disapprove, for good cause shown, requests to extend the time for filing comments on all proposed or final new or amended regulations, and requests to extend comment

periods following the issuance of final rules.

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

§ 385.18 Authority of the Chief, Coordination Section, Documentary Services Division.

The Chief, Coordination Section, Documentary Services Division, has the authority to coordinate and perform all administrative functions of the Department provided for in sections 2, 3 and 5 of Executive Order 12597 issued May 13, 1987, except that this delegation shall not include the exercise of the authority delegated by the President to the Secretary by sections 2 and 5 of that Order to determine not to disapprove orders of the Department in certain cases.

[Amdt. 385-3, 52 FR 18905, May 20, 1987. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.19 Authority of the Director, Office of Aviation Information, Bureau of Transportation Statistics.

The Director, Office of Aviation Information, Bureau of Transportation Statistics (BTS) has authority to:

(a) Conduct all rulemaking proceedings concerning accounting, reporting, and record retention requirements for carrying out Subparts I, II, and IV of the Statute, except the issuance of final rules and the disposition of petitions for reconsideration.

(b) Interpret the accounting, reporting, and record retention requirements used to carry out Subparts I, II, and IV of the Statute.

(c) Waive any of the accounting, reporting, and record retention requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions as may be prescribed for waivers in the applicable regulations, unless such authority is otherwise specifically assigned.

(d) Dismiss petitions for Department or BTS action with respect to accounting, reporting, and record retention matters when such dismissal is requested or consented to by the petitioner.

(e) Require special reports, documentation, or modifications to reports required by this chapter from any air carrier upon a determination that such reports or documentation or modifications are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, Department officials, or another agency or component of the Federal Government.

(f) Grant or deny requests by air carriers for extension of filing dates for reports required by subchapters A and D of this chapter.

(g) Grant or deny requests by air carriers for substitution of their own forms, adaptation of Department forms, or use of ADP media to meet special needs where Department approval of such forms or ADP media is required by subchapter A of this chapter.

(h) Determine the data necessary to complete the International Civil Aviation Organization reports required by U.S. Treaty; as provided in Order 81-3-120, establish any necessary supplemental reporting requirements; and dispose of petitions for extensions of filing dates or waivers with respect to the data required for such reports.

(i) Grant or deny motions filed under § 302.39 of this chapter requesting confidential treatment of aviation economic information or reports filed with BTS and place the decision in the motion's docket, which decision will be subject to review through a petition for reconsideration filed within ten days of issuance, to be acted upon by the Director, BTS.

(j) Grant or deny requests filed under § 241.22 of this chapter for confidential treatment of preliminary year-end financial reports.

(k) Grant or deny requests filed under § 248.5 of this chapter for confidential treatment of individual air carrier special reports.

(l) Grant or deny requests for use of domestic and international service segment and market data in accordance with the limitations on the availability of these data contained in § 241.19-6 of this chapter and Order 81-12-9.

(m) Grant or deny requests for use of international Origin and Destination

Survey statistics in accordance with the limitations on the availability of these data contained in § 241.19-7 of this chapter.

(n) Grant or deny requests for individual air carrier fuel data in accordance with the limitations on the availability of these data contained in paragraph (k) of the reporting instructions for Schedule P-12(a), which are contained in § 241.24 of this chapter.

(o) Grant or deny requests for individual air carrier financial data in accordance with the limitation on the availability of these data contained in paragraph (d) of the reporting instructions for Schedule F-1, which are contained in § 298.62 of this chapter.

(p) Grant or deny requests for individual air carrier financial data as reported on Schedule P-1(a) in accordance with § 241.22(b)(3) of this chapter.

[53 FR 51751, Dec. 23, 1988, as amended at 60 FR 66726, 66727, Dec. 26, 1995. Redesignated and amended by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.20 Authority of the Inspector General.

The Inspector General has authority to:

(a) Require special reports, including documentation, from any air carrier regarding audits and other examinations of carrier facilities, operations, and accounting and statistical records.

(b)(1) For accounting purpose, make findings regarding the reasonable necessity for the application of the Department authority to obtain access to lands, buildings, and equipment, and to inspect, examine, and make notes and copies of accounts, records, documents, papers, and correspondence of persons having control over, or affiliated with, any person subject to regulation used to carry out titles IV and X of the Act through issuance of an appropriate order, letter, or other transmittal;

(2) Authorize one or more auditors or special agents to conduct audits, inspections, and examinations and to make notes and copies in accordance with such findings.

(c) Release to the carrier that is the subject of a financial audit the audit 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-

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 ten (10) 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 (a), (b), and (c), 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

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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 ten (10) 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]

§ 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 before the effective date of the action

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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

business day following the date of service of the Reviewing Official's order, unless the order provides otherwise. Decisions by the Reviewing Official under this part are final and are not subject to petitions for reconsideration.

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

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AUTHORITY: Sec. 204, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

SOURCE: OR-27, 33 FR 70, Jan. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 389.1 Policy and scope.

Pursuant to the provisions of Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) as implemented by Bureau of Budget Circular A-25, dated September 23, 1959, the Board sets forth in this regulation the special services made available by the

Board and prescribes the fees to be paid for these and various other services.

Subpart B—Fees for Special Services

§ 389.10 Applicability of subpart.

This subpart describes certain special services made available by the Board and prescribes the fees and charges for these services.

§ 389.11 Services available.

Upon request and payment of fees as provided in subsequent sections, there are available, with respect to documents subject to inspection, services as follows:

- (a) Locating and copying records and documents.
- (b) Certification of copies of documents under seal of the Board.
- (c) Subscriptions to publications of the Board.
- (d) Transcripts of hearings.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-94, 40 FR 7242, Feb. 19, 1975]

§ 389.12 Payment of fees and charges.

The fees charged for special services may be paid by check, draft, or postal money order, payable to the Civil Aeronautics Board, except for charges for reporting services which are performed under competitive bid contracts with non-Government firms. Fees for reporting are payable to the firms providing the services.

§ 389.13 Fees for services.

Except for photocopy work, the basic fees set forth below provide for documents to be mailed with ordinary first class postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postal fees therefor will be added to the basic fee. Also, if special handling or packaging is required, costs therefor will be added to the basic fee. For photocopy work, postage will be in addition to the fee for copying.

§ 389.14 Locating and copying records and documents.

Public records and documents on file with the Civil Aeronautics Board will