

Title 14: Aeronautics and Space

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PART 204 DATA TO SUPPORT FITNESS DETERMINATIONS

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Authority: 49 U.S.C. Chapters 401, 411, 417.

Source: Docket No. 47582, 57 FR 38766, Aug. 27, 1992, unless otherwise noted.

Subpart A General Provisions

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- 204.1 Purpose.

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This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible place, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and

filing requirements applicable to carriers that hold dormant authority.
[72 FR 20036, Apr. 23, 2007]

204.2 Definitions.

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As used in this part:

(a) All-cargo air carrier or section 41103 carrier means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(b) Certificate authority means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 41102 of the Statute or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute. Certificated carriers are those that hold certificate authority.

(c) Citizen of the United States means:

(1) An individual who is a citizen of the United States;

(2) A partnership each of whose partners is an individual who is a citizen of the United States; or

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(d) Commuter air carrier means an air carrier holding or seeking authority under part 298 of this Chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(e) Eligible place means a place in the United States that

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89937 and 891252 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

(f) Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

(g) Fit means fit, willing, and able to perform the air transportation in question properly and to conform to the provisions of the Statute and the rules, regulations and requirements issued under the Statute.

(h) Interstate air transportation means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft

(1) Between a place in

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

(i) Key personnel include the directors, president, chief executive officer, chief operating officer, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(j) Normalized operations are those which are relatively free of start-up costs and temporary barriers to full-scale operations posed by the carrier's limited experience.

(k) Relevant corporations are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (i.e., any air carrier in which any directors, principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier as indicated, for example, by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial

personnel

with common responsibilities in both companies.

(l) Substantial change in operations, ownership, or management includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) The filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(m) Substantial interest means beneficial control of 10 percent or more of the outstanding voting stock.

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43523,

Aug. 22, 1995; 64 FR 12085, Mar. 11, 1999; 72 FR 20036, Apr. 23, 2007]

Subpart B Filing Requirements

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204.3 Applicants for new certificate or commuter air carrier authority.

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An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in paragraphs (a) through (v) of this section. In addition, the Department may require an applicant to provide additional data if necessary to reach an informed judgment about its fitness. If the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and

those

data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Air Carrier Fitness Division to ascertain what data required by this section are already available to the Department and need not be included in the filing.

Note: If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with 241.22(g).

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated, certifying that the applicant corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:

- (1) Their names and addresses;
- (2) The experience, expertise, and responsibilities of each;
- (3) The number of shares of the applicant's voting stock held by each and the percentage of the total number of such shares issued and

outstanding,

and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

- (4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 10 percent or more of total voting stock outstanding), and other interests each holds or has held in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant.

Such list shall include:

- (1) Each person's name, address and citizenship;

(2) The number of shares of the applicant's voting stock held by each

such

person and the corresponding percentage of the total number of such

shares

issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been

(i) An air carrier, a foreign air carrier, a common carrier, or

(ii) Substantially engaged in the business of aeronautics, or

(iii) An officer or director of any such entity, or

(iv) A holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and relationship to the applicant.

(i) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:

(1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and

(2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation;

(3) All footnotes applicable to the financial statements, including:

(i) A statement as to whether the documents were prepared in

accordance

with Generally Accepted Accounting Principles, and

(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;

(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant.

(l) A list of all actions and outstanding judgments for more than \$5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.

(m) The number of actions and outstanding judgments of less than

\$5,000

against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each

on

such judgments.

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be

purchased

or leased;

(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department,

including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation

or

person having a substantial interest in any relevant corporation, regarding compliance with the Statute or orders, rules, regulations, or requirements issued pursuant to the Statute, and any corrective actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)

(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:

(1) The date of the occurrence;

(2) The type of flight;

(3) The number of passengers and crew on board and an enumeration of

any

injuries or fatalities;

(4) A description of any damage to the aircraft;

(5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and

(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identify of the local FAA office and personnel responsible for processing an application for any additional FAA authority needed to conduct the proposed operations.

(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an

itemization of all pre-operating and start-up costs associated with the initiation of the proposed service. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and number of

tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs

should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the

preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined not more than \$10,000 or imprisoned not more

than five years, or both.

(The reporting requirements contained in this section were approved by the

Office of Management and Budget under control number 21060023) [Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43524,

Aug. 22, 1995]

204.4 Carriers proposing to provide essential air service.

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Applicants proposing to provide essential air service have been divided

into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier's fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Air Carrier Fitness Division to ascertain what information is already available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

- (1) All of the information required under 204.3 of this part.
- (2) A description of the back-up aircraft available to the applicant, including:
 - (i) The number of each type of such aircraft;
 - (ii) The conditions under which such aircraft will be available to the carrier;
 - (iii) The carrier's plans for financing the acquisition or lease of such additional aircraft; and
 - (iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.
- (3) A description of the fuel available to perform the proposed essential air services and the carrier's contracts with fuel suppliers.
- (4) The carrier's systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).
- (5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.
- (6) A description of the average number of block hours each type of aircraft is currently flown per day.
- (7) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.
- (8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.
- (9) A pro-forma income statement for the proposed operation for the first annual period.

(b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

- (1) All of the information required under 204.3 of this part.
- (2) All of the information required under paragraph (a) of this section.
- (3) A forecast Income Statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:
 - (i) Subsidy needed;
 - (ii) Estimated block hours and revenue miles by type of aircraft;

- (iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;
- (iv) An explanation of the derivation of estimates of operating expenses; and
- (v) A description of the manner in which costs and revenues are allocated.

(4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

(Approved by the Office of Management and Budget under control number

21060023)

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43524,

Aug. 22, 1995]

204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.
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(a) A certificated or commuter air carrier proposing a substantial change in operations, ownership or management shall file the data set forth in 204.3. These data must be submitted in cases where:

- (1) The proposed change requires new or amended authority, or
- (2) The change substantially alters the factors upon which its latest fitness finding is based, even if no new authority is required.

(b) Information which a carrier has previously formally filed with the Department, or with another Federal agency where they are available to the

Department, which continues to reflect the current state of the carrier's fitness may be omitted. The carrier instead should identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the carrier may contact the Department (Air Carrier Fitness Division) to ascertain what data required by this section, if any, are already available to the Department or are not applicable to the substantial change in question and need not be included in the filing.

(c) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to Docket Operations, M30, U.S.

Department

of Transportation, Washington, DC 20590, or by electronic submission at <http://dms.dot.gov> .

(d) Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, management, or ownership, including changes that may affect the air carrier's citizenship, shall be addressed to the Chief, Air Carrier Fitness Division, Office of the Secretary, U.S. Department of Transportation, Washington, DC 20590.

(Approved by the Office of Management and Budget under control number

21060023)

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 72 FR 20036,

Apr. 23, 2007]

204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

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Carriers proposing to make a change which would not substantially affect their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier's fitness into question, the Department may require the applicant carrier to file additional information.

204.7 Revocation for dormancy.

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(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all of the data required by 204.3 at least 45 days before it intends to provide any such air transportation.

Such filings shall be addressed to the Documentary Services Division, Department of Transportation, 1200 New Jersey Avenue, SE., Washington,

DC

20590. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been

no change in fitness data previously formally filed with the Department, the carrier shall file a sworn statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refiled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation.

During the pendency of the Department's consideration of a data submission

under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date of that decision or finding shall be the date considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

(Approved by the Office of Management and Budget under control number

21060023)