

DEPARTMENT OF TRANSPORTATION

SUPPORTING STATEMENT

Procedures and Evidence Rules for Air Carrier Authority Applications

OMB Control Number: 2106-0023

1. Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate the collection.

The Department of Transportation (DOT) is responsible for ensuring that air carriers requesting economic authority are fit, willing, and able to provide air transportation as a U.S. air carrier. Collection of this data provides DOT with a sufficient basis upon which to determine whether an applicant or operating U.S. air carrier is a U.S. citizen and has or continues to have the managerial competence necessary, the financial wherewithal, and the compliance disposition to conduct its proposed, current, or expanded operations.

Statutory requirements for this information collection are identified in 49 U.S.C. sections 41102, 41103, and 41738. The relevant sections of 49 U.S.C. require DOT to determine the initial fitness of all applicants for authority to provide certificated passenger and cargo air service, and commuter air service. 49 U.S.C. 41110(e) states that the fitness requirement for these air carriers is a continuous one and provides the DOT with the ability to modify, suspend, or revoke an air carrier's authority if it is no longer fit to operate, or if it fails to file the reports needed to monitor its continuing fitness.

14 CFR Parts 201, 204, and 291 contain evidentiary rules that set forth specific information that needs to be filed in fitness cases. Specifically, 14 CFR sections 201.1, 204.3, 204.4, 204.5, 204.6, and 291.10 set forth the application procedures and specific information filing requirements for air carriers seeking certificate or commuter authority or the information required to be filed by existing airlines demonstrating their continuing fitness. In addition, section 204.7 provides for revocation/termination of certificate or commuter authority if an air carrier does not operate for one year under any authority for which it was found fit. Furthermore, if an air carrier ceases operations, it must re-establish its fitness to operate before resuming operations.

CARES Act

Sections 4005 and 4114(b) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act authorizes the Secretary to require, "to the extent reasonable and practicable," an air carrier receiving financial assistance under the Act to maintain scheduled air transportation service as the Secretary deems necessary to ensure services to any point served by that air carrier before March 1, 2020 (Service Obligation). This Order introduces two new collection instruments, monthly certification, applicable to all carriers who receive monies under the CARES Act, and requests for exemptions from the service obligation.

DOT Strategic Goal:

This information collection supports the Department's infrastructure strategic goal, with the objectives to stimulate growth, productivity and economic competitiveness and to expand market opportunities of U.S. airlines.

2. *Indicate how, by whom, and for what purposes the information is to be used.*

Sections 201.1, 201.4, 291.10 contain the formal procedures to be followed by applicants in filing applications for certificate or commuter authority. Sections 204.3, 204.4, 204.5, and 204.6 identify the information that is required to be submitted by applicants in support of their fitness to hold Department authority to provide air transportation services to the public. Fitness information includes data on the company's owners, officers, management, and other key personnel, including their citizenship, background and qualifications for their positions; the applicant's operating plan and source of funds to provide its proposed services; and the applicant's safety and compliance history.

The Department uses the information collected to perform a unique and important function in its review of the fitness of air carriers. The existence of minimum standards for fitness is a primary deterrent for unsophisticated and potentially unfit companies that might otherwise commence operations to the detriment of the traveling public. As a result of the Department's efforts in establishing and monitoring the fitness of air carriers, a number of applicants for initial certificate or commuter authority have been found unfit and have withdrawn their applications in anticipation of an unfavorable finding, and previously certificated air carriers have made changes designed to strengthen their ability to provide air carrier services without posing an undue risk to the traveling and shipping public. If the collection of information was proscribed, it could create serious consumer problems by, for instance, permitting financially marginal air carriers or those with questionable compliance attitudes or inadequate managerial capabilities to institute and/or continue airline services.

In addition, section 204.7 requires air carriers that cease operations often do so because of extreme financial difficulties or safety problems establish that they are fit before recommencing operations. The requirements of section 204.7 that such air carriers establish that they continue to be fit before recommencing operations enables the Department to ensure that such air carriers will not provide unwarranted risk to the public.

CARES Act

The Department uses the monthly reporting information collected in accordance with Order 2020-4-2 to ensure that covered carriers accepting financial assistance under the CARES Act, and therefore obligated to provide certain air services, operate service in accordance with their obligations. This report assists the Department in determining air carriers' continued fitness to hold Department economic authority.

For those covered carriers requesting an exemption from their service obligations, the information collected includes the particular points or flight service levels for which an exemption is requested and the reasons the applicant covered carrier believes its request is warranted under the provisions of Sections 4005 and 4114(b) of the CARES Act.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.*

14 CFR Part 302, which became effective on October 1, 1997, authorizes the filing of documents by electronic means. Applicants submit applications for new economic authority or

the information required to be filed by existing airlines demonstrating their continuing fitness electronically through <http://www.regulations.gov>, or through email directly to our office. Approximately 90 percent of the responses are sent electronically. For the remaining 10 percent that submit paper responses, those are scanned and submitted electronically to the Federal government-wide docket management system at <http://www.regulations.gov>. Electronic submission helps reduce the costs associated with printing and mailing the information through the postal service. All of these documents may be accessed by the public at <http://www.regulations.gov>.

4. *Describe efforts to identify duplication.*

On occasion, an air carrier holding authority may have filed fitness-related information with the Department in the recent past or in connection with another proceeding. The Office of the Secretary, the Federal Aviation Administration, and the National Transportation Safety Board maintain databases containing information on the type and status of an air carrier's authority, aircraft operated consumer complaints, enforcement history, and accident and incident reports. By making use of these information sources, we are able to reduce the information required to be supplied by applicants.

When such information still accurately reflects its fitness, it may cite the date and place of such filings and thus avoid having to file duplicate information. If material previously filed by an air carrier is no longer accurate because, for example, its financial, managerial, ownership, or compliance situation has changed, we must require the air carrier to file updated information.

In most cases, however, applicants for new authority have not previously filed information similar to that required in Part 204 with the Department of any other agency.

5. *If the collection of information involves small business or other small entities, describe the methods used to minimize burden.*

We have tried to simplify and assist small companies in the preparation of fitness application through the development and distribution of explanatory booklets which contain copies of the applicable regulations, sample application forms, and a narrative discussion of the type of information we look for in making fitness determinations and the form in which such information may be submitted. These booklets can save air carriers many hours in preparing applications and are available online at <http://www.transportation.gov/aviation>.

6. *Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The Department is required by statute to determine the fitness of anyone seeking to hold a license to provide air transportation. The collection of evidence of air carrier fitness is done on an occasional basis, in connection with applications from companies seeking new air carrier authority or supporting their continuing fitness to hold such authority. 14 CFR Parts 201, 204, and 291 contain evidentiary rules that set forth specific information that needs to be filed in fitness cases. Without these rules, the burden of submitting an application would be

substantially greater to the federal government and to the respondents since there would be no uniform rule detailing the information requirements. New applicants unfamiliar with past fitness cases would be at a loss to determine what to file and would likely file too little material, necessitating requests for further information from the Department's staff, resulting in delays in processing the application. In order to avoid these problems, potential applicants would seek personal assistance from Department staff on how to set up an application. This would be a tremendous drain on staff time, increasing the government's burden substantially.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with guidelines.

These collections are consistent with 5 CFR 1320.6.

8. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A notice, pursuant to 5 CFR 1320.8(d), soliciting comments on the proposed extension of the information collections was published in the Federal Register on October 1, 2019, (84 FR 52173). No comments were received. A 30-day notice was published on December 16, 2019, (84 FR 68542). Comments go directly to OMB.

CARES Act

The Department tentatively determined in Order 2020-3-10 published in Docket DOT-OST-2020-0037 on www.regulations.gov that covered carriers accepting financial assistance under the CARES Act, and therefore obligated to provide certain air services, must certify to the Department, on a monthly basis, that they operated service in accordance with their service obligations. In addition, the Department also provided for covered carriers to file exemptions to remove particular points from their service obligations or to relax the flight service level requirement for particular points in their Service Obligation. The Department invited and received comments to its order. By Order 2020-4-2, the Department finalized its reporting proposal unchanged and thus the monthly reporting condition is only applicable until September 30, 2020, at which time the service obligation is terminated. Also by that Order, the Department was persuaded by commenting parties that an expedient exemption process was necessary and incorporated the procedures into the exemption process outlined in detail in the order.

9. Describe any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

A motion requesting confidential treatment may be filed by respondents to these collections under section 302.12 of the Department's Procedural Regulations (14 CFR 302.12). Such motions are handled in accordance with the Freedom of Information Act and the Department's past practices.

CARES Act

Certifications are to be submitted to Docket DOT-OST-2020-0037 and entitled, "Monthly Air Service Certification of [AIRLINE NAME]." Each certification must include the verification statement at 14 CFR Part 302.4(b). As such these Certifications are public.

Applications for exemptions are to be submitted to Docket DOT-OST-2020-0037 and entitled, "Request for Exemption from Service Obligation." The request for exemption should set forth the particular points or flight service levels for which an exemption is requested and the reasons the applicant covered carrier believes its request is warranted under the provisions of Sections 4005 and 4114(b) of the CARES Act. All applications are public.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitude, religious beliefs, and other matters that are commonly considered private.

There are no sensitive questions.

12. Provide estimates of the hour burden of the collection of information. The statements should: indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was established.

Number of respondents: 186

Number of responses: 1,218

Frequency of response: on occasion; for CARES Act, from April to September 30, 2020.

Annual hour burden: 16,170

Annualized cost to respondents: \$1,617,000

Explanation of how the burden was estimated:

We have estimated the number of annual respondents and responses based on the average of the level of activity experienced during the period from June 1, 2018, to May 31, 2019. Applicants file the required information only when applying for new air carrier authority or supporting their continuing fitness to hold such authority.

To calculate the total number of annual respondents, we summed the number of respondents for (1) initial/additional certificate or commuter authority which includes fitness evidence, (2) additional certificate authority with no fitness evidence required, and (3) review of continuing fitness in which evidence requirements vary.

The annual burden on the applicant estimate is based on our acquired knowledge of the industry's experience in preparing the various types of applications under 14 CFR Parts 201, 204, and 291. Assumptions made in arriving at these estimates include the following: (1) Not all applications require the filing of comparable amounts of, or even any, fitness data; and (2) the burden on the applicants is the minimum that a reasonable person would expect to supply only the information required; that is, optional expenses an applicant might incur for outside consultants or attorneys to assist in preparing an application are not considered.

The estimated total annual burden on 76 applicants of preparing and submitting filings for initial certificate and commuter authority, additional certificate authority and continuing fitness reviews is 8,250 hours. To calculate the number of hours, we multiplied the total number of filings per category by the number of hours it takes an applicant to prepare a filing. We then summed the totals for each category. These burden estimates are based on an average burden ranging between 20 person-hours and \$2,000 for an application requiring no fitness evidence, and 65 person-hours and \$6,500 for an application requiring such evidence at an average cost per hour of \$100, which includes the cost of analytical, legal, and clerical participation in the preparation of these applications (see attached chart for a breakdown of burden estimate).

CARES Act

Covered carriers accepting financial assistance under the CARES Act, and therefore obligated to provide certain air services, must certify to the Department, on a monthly basis, that they operated service in accordance with their obligations. Certifications are to be submitted to Docket DOT-OST-2020-0037 and entitled, "Monthly Air Service Certification of [AIRLINE NAME]." The estimated total annual burden on 55 carriers preparing and submitting monthly CARES Act certifications from April to September 30, 2020, is 1,320 hours based on an estimate of 4 hours per report. The cost for each certification is \$400, equivalent to a total annual cost of \$132,000.

The Department anticipates all of the covered carriers will request exemptions from the obligations in the Order. The time required to prepare each waiver application is 10 hours, for an annual total of 6,600 hours. The total annual cost for exemption applications is \$660,000.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection.

- a. Total capital and start-up cost component – none
- b. Total operation and maintenance and purchase of services component – none

The fitness information to be provided by respondents, if not already available in the company's own records, would need to be developed anyway as tools for monitoring its operations or for the requirements of suppliers, lessors, and lenders. Therefore, the burden should extend no further than collecting already existing material and putting in a form appropriate for filing with the Department.

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include qualification of hours, operational

expense, and any other expense that would not have been incurred without this collection of information.

The total annual estimated cost to the federal government for processing the estimated 228 responses, requiring an average of 72 hours to process, is \$949,200. The average cost per hour for processing an application is \$70, regardless of the type of application filed. However, the average cost per filing ranges from \$2,800 to \$7,000 based on the average number of hours it takes to process the type of filing (see attached chart for a breakdown of burden estimate).

CARES Act

Each monthly reporting certification takes an average of 4 hour to process. 330 certifications will cost \$92,400 to review.

Each exemption application takes an average of 20 hours to process. 660 exemptions will cost \$924,000 to review.

15. Explain reasons for any program changes or adjustments.

There are adjustment changes due to the increase in the number of applications/filings submitted during the period from June 1, 2018, to May 31, 2019, plus the increase in costs associated with the analytical, legal, and clerical participation in the preparation of these applications.

CARES Act

Other adjustments result from the required monthly reports and exemption applications authorized to air carriers receiving financial assistance in accordance with the CARES Act and pursuant to Final Order 2020-4-2. The reporting period for the monthly reports and the period to request an exemption is from April to September 30, 2020.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

Not applicable.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Not applicable.

Attachment
Estimated Annual Burden on Applicants and Government

	Initial/additional cert. or commuter authority (incl. fitness evidence)	Additional certificate authority (no evidence required)	Review of continuing fitness (evidence requirements vary)	CARES Act Monthly reports	CARES Act Exemption	TOTAL
Applicants	6	38	32	55	55	186
Filings each	3	3	3	6	12	27
Total filings	18	114	96	330	660	1218
<u>Burden on Respondents</u>						
Avg. number of hours to prepare filing	65	20	50	4	10	29.8
Avg. cost per hour	\$100	\$100	\$100	\$100	\$100	\$100
Avg. cost per filing	\$6,500	\$2,000	\$5,000	\$400	\$1,000	\$2,980
Total hours	1,170	2,280	4,800	1,320	6,600	16,170
Total cost to Applicants	\$117,000	\$228,000	\$480,000	\$132,000	\$660,000	\$1,617,000
<u>Burden on Government</u>						
Avg. number of hours to process filing	100	40	75	4	20	47.8
Average cost per hour	\$70	\$70	\$70	\$70	\$70	\$70
Average cost per filing	\$7,000	\$2,800	\$5,250	\$280	\$1,400	\$3,346
Total hours	1,800	4,560	7,200	1,320	13,200	28,080
Total cost to Government	\$126,000	\$319,200	\$504,000	\$92,400	\$924,000	\$1,965,600