

**Office of the Secretary, DOT****§ 303.02**

Subject	Old rule	New rule
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**PART 303—REVIEW OF AIR CARRIER AGREEMENTS****Subpart A—General Provisions**

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AUTHORITY: 49 U.S.C. chapters 401, 413, 417.

SOURCE: 50 FR 31142, July 31, 1985, unless otherwise noted.

**Subpart A—General Provisions****§ 303.01 Purpose.**

This part sets forth the procedures by which applications may be made to the Department of Transportation under 49 U.S.C. 41308 and 41309 and procedures governing proceedings to enforce these provisions. These proce-

dures supplement the rules described in part 302 of this chapter, which also apply to the review of air carrier agreements.

[Doc. No. DOT-OST-2014-0140, 84 FR 15936, Apr. 16, 2019]

**§ 303.02 Definitions.**

(a) The term *Assistant Secretary* means the Assistant Secretary for Aviation and International Affairs, or as delegated. As provided in 49 CFR 1.21, the Secretary or Deputy Secretary may exercise any authority in lieu of the Assistant Secretary under the provisions of this part.

(b) The term *documents* means:

(1) All written, recorded, transcribed or graphic matter including letters, telegrams, memoranda, reports, studies, forecasts, lists, directives, tabulations, logs, or minutes and records of meetings, conferences, telephone or other conversations or communications; and

(2) All information contained in data processing equipment or materials. The term does not include daily or weekly statistical reports in whose place an annual or monthly summary is submitted.

(c) The term *hearing* means either a show-cause proceeding as provided in § 303.44 or a full evidentiary hearing as provided in § 303.45, whichever is determined by the Assistant Secretary to be appropriate.

(d)–(g) [Reserved]

(h) The term *Section 41309 transaction* means any contract, agreement or discussion of a cooperative working arrangement within the scope of 49 U.S.C. 41309.

(i) [Reserved]

[Doc. No. DOT-OST-2014-0140, 84 FR 15936, Apr. 16, 2019]

## § 303.03

### § 303.03 Requirement to file application.

A person who seeks approval of a section 41309 transaction must file the application with the Docket Operations Office, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, or by electronic submission at <http://www.regulations.gov>. The application must conform to the requirements set forth in §§ 303.04 and 303.05.

[Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

### § 303.04 General rules governing application content, procedure and conditions of approval.

(a) Unless specifically exempted by this part or by an order of the Assistant Secretary, a person filing an application pursuant to § 303.03 of this part shall prepare and file the application in the manner specified in this section. The application shall also contain the information required by subpart D of this part. An application may be deemed incomplete if it is not in substantial compliance with these requirements.

(b) The parties to the transaction may file either separate applications or one joint application so long as all the information required herein is submitted for each party to the transaction. The Assistant Secretary or Administrative Law Judge, if the matter has been assigned to a judge, upon his or her initiative or upon application, may order the target company or other persons to submit some or all of the information required by this subpart, or other information under 14 CFR 302.25.

(c) Each page of the application and each document submitted with the application shall be marked with the name, initials, or some other identifying symbol of the applicant. The application shall also indicate the date of preparation and the name and corporate position of the preparer.

(d) Where the required information is in data processing equipment, on microfilm, or is otherwise not eye-readable, the applicant shall provide such information in eye-readable form.

(e) The information provided by the applicant shall be updated in a timely

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fashion throughout the period of consideration of the application.

(f) If any information or documents required by the applicable subpart are not available, the applicants shall file an affidavit executed by the individual responsible for the search explaining why they cannot be produced.

(g) The Assistant Secretary or the Administrative Law Judge may order any applicant to submit information in addition to that required by the applicable subpart.

(h) An applicant may withhold a document required by this part on the grounds that it is privileged, but each document so withheld shall be identified and the applicant shall supply a brief description of the nature of the document, a written statement indicating the basis of the privilege claimed, and the names of the preparers and recipients of the document. If any interested party contests the assertion of privilege, the document shall be promptly submitted to the Assistant Secretary, or the Administrative Law Judge, if the matter has been assigned to a Judge. Where appropriate, an in camera inspection may be ordered.

(i) The person submitting the application to the Department shall send a complete copy of the application to the Chief, Transportation Section, Antitrust Division of the Department of Justice, at the same time as it is filed with the Docket Operations Office.

(j) The applicant shall, if requested, be responsible for expeditiously providing the application to any interested person, whether or not a party.

(k) Unless otherwise specified in this subpart, all applications shall conform generally to the requirements set forth in 14 CFR part 302, subpart A.

(l) In exceptional circumstances, the Assistant Secretary may waive or alter the procedural requirements of this part to permit a transaction to proceed on an expedited basis.

[50 FR 31142, July 31, 1985, as amended by Amdt. 302-2, 54 FR 33499, Aug. 15, 1989; 65 FR 6456, Feb. 9, 2000; Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

### § 303.05 Applications requesting antitrust immunity.

(a) Each application must state explicitly whether or not the applicant

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seeks antitrust immunity under the provisions of 49 U.S.C. 41308. If antitrust immunity is requested, the application should specify whether the applicant seeks full immunity or immunity only from the provisions of sections 4, 4a and 4c of the Clayton Act, 15 U.S.C. 15, 15a, 15c. Each application seeking antitrust immunity shall contain a statement explaining why the applicant believes immunity is in the public interest and necessary in order for the transaction to proceed.

(b) [Reserved]

(c) Any material misrepresentation of fact in such an application shall be grounds for rescission *nunc pro tunc* of any antitrust immunity granted as a result of the misrepresentation.

(d) A request for renewal of any immunity granted does not operate under section 558 of Administrative Procedure Act, 5 U.S.C. 558(c), to extend the period of immunity conferred.

[50 FR 31142, July 31, 1985, as amended by Amdt. 303-2, 54 FR 33499, Aug. 15, 1989; Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**§ 303.06 Review of antitrust immunity.**

The Assistant Secretary may initiate a proceeding to review any antitrust immunity previously conferred by the Department's predecessor or the Department in any section 41309 transaction. The Assistant Secretary may terminate or modify such immunity if the Assistant Secretary finds after notice and hearing that the previously conferred immunity is not consistent with the provisions of section 41308. In any proceeding to review such immunity, the proponents of the immunity shall have the burden of justifying the continuation of previously conferred immunity under the provisions of section 41308.

[Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**§ 303.07 Transitional rule.**

If a section 41309 application or a request for antitrust immunity under section 41308 is pending on May 16, 2019, such application or request shall be deemed made pursuant to the provi-

sions of this part as amended May 16, 2019.

[Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**Subpart B [Reserved]****§§ 303.10–303.19 [Reserved]****Subpart C [Reserved]****§§ 303.20–303.24 [Reserved]****Subpart D—Section 41309 Applications****§ 303.30 General provisions concerning contents of applications.**

A section 41309 application shall contain the following general information:

(a) The name, mailing address and primary line of business of each party to the contract, agreement or request for authority to discuss a possible cooperative working arrangement.

(b) If the contract or agreement for which approval is sought is not evidenced by a resolution of an air carrier association, the application shall contain a copy of the contract or agreement that is certified to be true and complete by each party to the contract of agreement. If the contract or agreement is set forth in an exchange of correspondence, copies of all such correspondence must be submitted and must be certified as true and complete by all parties to the contract or agreement. If the contract or agreement is oral, a memorandum fully describing the agreement must be submitted and must be certified as true and complete by all parties to the contract or agreement. If approval is sought for a request for authority to discuss a possible cooperative working arrangement, the application shall contain a complete description of the possible cooperative working arrangement and all matters to be discussed. The description shall be certified to be true and complete by each party to the proposed discussion.

(c) If the contract, agreement or request for authority to discuss a cooperative working arrangement is evidenced by a resolution or other action of an air carrier association, the application shall contain the resolution or

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other action and a certification by an authorized employee of the association that the resolution or other action was duly adopted on a certain date. The authorized employee shall also specify in such certification the name of each air carrier that concurred in such resolution or other action and the name of each air carrier member that did not concur.

[50 FR 31142, July 31, 1985, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**§ 303.31 Justification for the application.**

A section 41309 application shall explain the nature and purpose of the contract, agreement or request to discuss a cooperative working arrangement and describe how it changes any price, rule, or practice existing under a previously approved application. The application also, consistent with Department of Transportation and the precedent of DOT's predecessor, shall contain factual material, documentation, and argument in support of the application. Economic analyses, when required, shall include full explanatory details, including data sources and allocation methods. If the applicants intend to rely upon market data sources, other than those available to the public by the Department, the complete market data shall be included with the application at the time of filing. If the applicants intend to rely on public benefits to justify approval, they shall describe these benefits, including foreign policy and comity considerations.

[Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**§ 303.32 Service of the application.**

(a) Except as provided in paragraph (b) of this section, a section 41309 application described in § 303.30(c) of this subpart and any related pleadings shall be served on any person or organization that has previously advised the air carrier association of its desire for service of such agreements. Each application shall contain the names and addresses of all persons served and a notice that any party in interest may within 21 days of the date of the application file comments with the Assistant

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Secretary in support or opposition to the application.

(b) Service of IATA Traffic Conference agreements and amendments thereto upon any person or organization that previously has advised IATA of its desire for service of agreements may be accomplished by sending a summary notice specifying the filing date; the IATA memorandum number; the particular Conferences involved; the subject matter (e.g., cargo/pas-senger, tariffs/agency matters/ proce-dures); the proposed effective date(s); the markets or Conference areas af-fected; the names of the carriers par-ticipating in the agreement; the names of all persons served; and a notice that any party in interest may within 21 days of the date of filing of the applica-tion file comments with the Assistant Secretary in support of or opposition to the application. A request for a com-plete copy of the application can be made under the provisions of § 303.04(j).

[50 FR 31142, July 31, 1985, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**§ 303.33 Modifications and cancella-tions.**

This subpart also applies to all modi-fications or cancellations of contracts or agreements or requests for author-ity to discuss a possible cooperative working arrangement.

**Subpart E—Procedures Upon Application or Review****§ 303.40 Determination of compliance.**

(a) Within 10 days after an applica-tion is filed pursuant to § 303.03, the Assistant Secretary will determine whether the application complies with the requirements of §§ 303.04 and 303.05.

(b) If the Assistant Secretary deter-mines that the application is incom-plete, he or she may issue a notice dis-missing the application without preju-dice. If the application is dismissed, and statutory time period for comple-tion of proceedings will not begin to run until a completed application is filed.

**Office of the Secretary, DOT****§ 303.45****§ 303.41 Notice.**

(a) The Documentary Service Division shall compile a weekly list of all applications filed under §§ 303.04 and 303.05. The list shall include a description of the application, the docket number, date of filing, state that it may be reviewed in the Documentary Services Division, and indicate that interested parties may comment on the application or request a hearing within 21 days of the date of filing or other period as specified. The weekly list will normally be prepared on the following Monday, or as soon as possible, and will be posted on a public bulletin board in the Documentary Services Division. The list also shall be submitted for publication in the **FEDERAL REGISTER**.

(b) In appropriate case, particularly when an application concerns a matter of broad public significance, the Assistant Secretary may cause a notice of an application and request for public comment to be published separately in the **FEDERAL REGISTER**.

**§ 303.42 Comments on application.**

(a) Unless a different comment period is specified by notice or order, or in a notice of filing published in the **FEDERAL REGISTER**, any person may file comments, responses to the application, and/or a request for a hearing, within 21 days of the filing of an application.

(b) Comments supporting or opposing an application or proposing conditions and responses thereto shall state with particularity the factual basis on which the person commenting relies, and provide affidavits or other material in support of the factual basis, if appropriate.

(c) Requests for a formal oral evidentiary hearing must set out with specificity the material issues of fact in dispute that cannot be resolved without such a hearing. Vague, unsupported allegations will not suffice.

[50 FR 31142, July 31, 1985, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**§ 303.43 Action following the comment period.**

(a) [Reserved]

(b) *Section 41309 applications.* After the period for which comments, requests for a hearing or responses to an order to show cause are due concerning a section 41309 application, the Assistant Secretary may proceed by order requesting further information or justification or by order of approval or disapproval or, in appropriate cases, may proceed by order to show cause or by order instituting a full evidentiary hearing.

(c) Notice to the public of any full evidentiary hearing or order to show cause concerning an application shall be made by publication in the **FEDERAL REGISTER**.

[50 FR 31142, July 31, 1985, as amended by Amdt. 303-2, 54 FR 33500, Aug. 15, 1989; Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

**§ 303.44 Show cause proceedings.**

If the Assistant Secretary determines that an application, or review of a previously granted application, will be considered in a show cause proceeding, a tentative decision shall be issued inviting interested persons to show cause why the tentative decision should not be made final. Interested persons may respond to the order within the time specified in the order. Replies to such responses shall be permitted within the time specified in the order. Persons wishing to introduce additional facts into the record should incorporate such information in their responses or replies by affidavit. In the case of applications, show cause orders may be issued after the receipt of initial comments on the application.

**§ 303.45 Evidentiary hearings.**

(a) If the Assistant Secretary determines that an application, or review of a previous granted application, should be the subject of a full evidentiary hearing, he or she shall issue an order so stating. The term "full evidentiary hearing" includes any hybrid format set out in the instituting order. This order shall set forth the issues that are to be considered in such hearing.

(b) After the issuance of an order for a full evidentiary hearing, the Chief Administrative Law Judge shall promptly appoint an Administrative Law Judge to conduct such hearing in

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accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556, and the Rules of Practice in part 302 of this chapter.

(c) The applicants and the Assistant General Counsel for Aviation Enforcement and Proceedings shall be parties in any full evidentiary hearing held under this part. The Assistant Attorney General, Antitrust, shall be a party upon notice filed with the Administrative Law Judge. Other persons may intervene as parties as provided by § 302.20 of this chapter.

(d) Within the time specified in the order instituting the full evidentiary hearing, the Administrative Law Judge shall recommend to the Assistant Secretary that the application be approved or denied or that the previously granted exemption approval or immunity should be terminated or continued in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing record, and shall include a statement of the Administrative Law Judge's findings and conclusions, and the reasons or basis therefore, or all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be served on each party.

(e) Within 10 days after the date the Administrative Law Judge serves his or her recommendation, any party may file written exceptions to the recommendation for consideration by the Assistant Secretary. Within 21 days after the service date of the judge's recommendation, any party may file a brief in support of or in opposition to any exceptions. This period may be altered by order of the Assistant Secretary, who may also authorize the filing of reply briefs.

[50 FR 31142, July 31, 1985, as amended at 65 FR 6456, Feb. 9, 2000; as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]

### § 303.46 Decision by the Assistant Secretary.

The Assistant Secretary shall decide, on the basis of the record and in accordance with the procedures prescribed in part 302 of this chapter, whether to grant or deny, in whole or in part, the application. A copy of the

Assistant Secretary's final decision shall be served on all parties.

## PART 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS

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- 305.1 Applicability.
- 305.2 Definition.
- 305.3–305.4 [Reserved]
- 305.5 Initiation of investigation.
- 305.6 Appearance of witnesses.
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- 305.8 [Reserved]
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- 305.10 Nonpublic character of proceedings.
- 305.11 Procedures after investigation.
- 305.12 Motions to quash or modify an investigation subpoena.

AUTHORITY: 49 U.S.C. chapters 401, 417, 461; 5 U.S.C. 555, 556.

SOURCE: Docket No. 82, 50 FR 2421, Jan. 16, 1985, unless otherwise noted.

### § 305.1 Applicability.

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of 49 U.S.C. Subtitle VII, Chapter 411 or 49 U.S.C. 40102(2), 41502, 41507, 41508, 41509, 41702, 41703, or 46101, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the U.S. Government, the District of Columbia, or the several States and their political subdivisions.

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15937, Apr. 16, 2019]