

§ 302.204

of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved.

§ 302.204 Responsive documents.

(a) Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Except as otherwise provided in § 302.212(d), answers shall be filed within twenty one (21) days of the original or amended application and shall be served in accordance with § 302.203.

(b) Replies to answers shall be filed within fourteen (14) days after the filing of the answer.

(c) Persons having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.205 Economic data and other facts.

Whenever economic data and other facts are provided in any pleading, such information shall include enough detail so that final results can be obtained without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.206 Verification.

Any pleading filed under this subpart shall include a certification as provided in § 302.4(b).

DISPOSITION OF APPLICATIONS

§ 302.207 Cases to be decided on written submissions.

(a) Applications under this subpart will be decided on the basis of written submissions unless the DOT decision-maker, on petition as provided in § 302.208 or on his or her own initiative, determines that an oral presentation

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or an administrative law judge's decision is required because:

(1) Use of written procedures will prejudice a party;

(2) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(3) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

(b) The standards employed in deciding cases under § 302.210(a)(1) or (5) shall be the same as the standards applied in cases decided under § 302.210(a)(4). These are the standards set forth in the Statute as interpreted and expanded upon under that Statute.

§ 302.208 Petitions for oral presentation or judge's decision.

(a) Any person may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.207 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decision-maker for decision;

(3) An estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and

(4) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(b) Petitions for an oral hearing, oral argument, or an administrative law judge's decision shall be filed no later than the due date for answers in proceedings governed by § 302.211, § 302.212

and §302.213, and be accompanied with the information specified in paragraphs (a)(1) and (a)(2) of this section. Filing of the information required in paragraphs (a)(3) and (a)(4) of this section may be deferred until the DOT decisionmaker has decided to hold a formal proceeding.

(c) Where a stipulation of disputed facts would eliminate the need for an oral presentation or an administrative law judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.209 Procedures for deferral of applications.

Within twenty-eight (28) days after the filing of an application under this subpart, the DOT decisionmaker may defer further processing of the application until all of the information necessary to process that application is submitted. The time periods contained in this subpart with respect to the disposition of the application shall not begin to run until the application is complete. In addition, the DOT decisionmaker may defer action on a foreign air carrier permit application for foreign policy reasons.

§ 302.210 Disposition of applications; orders establishing further procedures.

(a) *General requirements.* The DOT decisionmaker will take one of the following actions with respect to all or any portion of each application:

(1) Issue an Order to Show Cause why the application should not be granted, denied or dismissed, in whole or in part.

(2) Issue a Final Order granting the application if the DOT decisionmaker determines that there are no material issues of fact that warrant further procedures for their resolution.

(3) Issue a Final Order dismissing or rejecting the application for lack of prosecution or if the application does not comply with this subpart or is otherwise materially deficient.

(4) Issue an order setting the application for oral evidentiary hearing. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate

whether one or more attorneys from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. All of the procedures set forth in §302.214 through §302.218 will apply unless the DOT decisionmaker decides otherwise.

(5) Begin to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker may indicate which, if any, of the procedural steps set forth in §302.215 through §302.219 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(b) *Additional evidence.* An order establishing further procedures under paragraph (a)(1), (4) or (5) of this section may provide for the filing of additional evidence.

(c) *Petitions for reconsideration.* Petitions for reconsideration of an order issued under this section will not be entertained except to the extent that the order dismissed or rejected all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in §302.220 will be calculated from the date of the order reinstating the application.

§ 302.211 Procedures in certificate cases involving initial or continuing fitness.

(a) *Applicability.* This section applies to cases involving certificate authority under sections 41102 and 41103 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such certificates, where the issues involve a determination of the applicant's fitness to operate. Where such applications propose the operation of scheduled service in limited entry international markets, the provisions of §302.212 also apply.

(b) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will take action as provided in §302.210.