

§ 323.3

14 CFR Ch. II (1-1-07 Edition)

former Civil Aeronautics Board (“CAB”) in the form of a certificate of public convenience and necessity under section 41102 of the Title 49 of the United States Code (Transportation) (“the Statute”) or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute.

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 89-9-37 and 89-12-52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute. (For availability of Department of Transportation Orders, see 49 CFR part 7, subpart E and appendix A.)

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

FAA means the Federal Aviation Administration, U.S. Department of Transportation.

FAA-designated hub means any airport serving a small, medium, or large air traffic hub listed in the Department of Transportation publication, *Airport Activity Statistics of Certificated Route Carriers*.

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

United States includes the several States, the District of Columbia, and the several territories and possessions of the United States. *State* includes any of the individual entities comprising the United States.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 323.3 Who shall file notices.

(a) *Terminations, suspensions, or reductions by certificated carriers.* The notice described in § 323.4(a) shall be filed by any certificated carrier that intends to:

(1) Terminate or suspend all passenger air transportation that it is pro-

viding to any eligible place in the United States when that termination or suspension will leave no certificated carriers serving that place. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two places;

(2) Reduce passenger air transportation so that any eligible place receives less than the level of essential air service determined by DOT;

(3) Terminate or suspend all passenger air transportation that it is providing to any eligible place in the United States for which DOT has not issued an essential air service determination under either § 325.5 or § 325.7 of this chapter, when that termination or suspension will leave only one certificated carrier serving that place. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two places;

(4) Reduce passenger air transportation to any eligible place in Alaska for which DOT has not determined the level of essential air service so that the service between that place and every other place served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average weekly number of round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between DOT and the State of Alaska; or

(5) Terminate, suspend, or reduce passenger air transportation at an eligible place for which DOT has issued, or is required to issue, an essential air service determination under section 41731 or section 41733 of the Statute so that the total available seats of all the carriers linking that place to FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. Service to a hub shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two places.

(b) [Reserved]

(c) *Uncertificated carriers.* The notice described in §323.4(a) shall be filed by any uncertificated carrier that intends to terminate, suspend, or reduce:

(1) Air transportation so that any eligible place receives less than the level of essential air service determined by the DOT;

(2) Passenger air transportation to any eligible place for which DOT has not determined the level of essential air service, other than a place in Alaska, so that there is no FAA-designated hub from which the place receives at least two round trip flights per day, 5 days per week; or

(3) Passenger air transportation to any eligible place in Alaska, for which DOT has not determined the level of essential air service, so that the service between that place and every other place served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average number of weekly round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between DOT and the State of Alaska.

(d) For the purpose of this section, in ascertaining the level of air transportation being provided to a place or between two places, air transportation that has been the subject of a notice filed under this section shall be considered not in operation for the duration of the notice period.

(e) If a certificated carrier was, before October 24, 1978, granted authority to suspend air transportation, and that authority ends on a stated date, the carrier shall comply with the requirements of this part before continuing the suspension beyond that date.

(f) If a certificated carrier was, before October 24, 1978, granted authority to terminate or suspend air transportation, but has not suspended service, the carrier shall comply with the requirements of this part before terminating or suspending service.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, 19166, May 1, 1996]

§ 323.4 Contents of notices.

(a) The notice required under §323.3 (a) and (c) shall contain:

(1) Identification of the carrier, including address and telephone number.

(2) Statement whether the carrier is a certificated carrier or an uncertificated carrier.

(3) Names of all other air carriers serving the point at the time of filing.

(4) Description of the service to be terminated, suspended, or reduced, including:

(i) Arrival and departure times at the affected points of the flights to be discontinued,

(ii) Aircraft type used,

(iii) Routes of the flights to be discontinued, and a statement of which routes, if any, will be left without non-stop or single-plane service from a certificated carrier by the intended change, and

(iv) Date of intended termination, suspension, or reduction of service.

(5) A statement whether DOT has determined the level of essential air service for the point, and

(i) If such a determination has been made, a statement whether the intended termination, suspension, or reduction will reduce air transportation to the place below the essential level; or

(ii) If such a determination has not been made, and the place is an eligible place, a statement whether the intended termination, suspension, or reduction reasonably appears to deprive the place of essential air service, and an explanation.

(6) If the place is an eligible place, the calendar date when objections are due under §323.10.

(7) Proof of service upon all persons specified in §323.7(a). The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(b) [Reserved]

(c) DOT may require any carrier filing notice to supply additional information.

(Approved by the Office of Management and Budget under control number 3024-0030)

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