

(3) The document must be capable of being scanned and be easy to read both in paper form and as scanned into the electronic docket. A document that meets the following specifications is capable of being scanned using automatic feeders and is easy to read both in paper form and as scanned into the electronic docket. Documents that do not meet these specifications may not be legible.

- (i) On white paper.
- (ii) On paper not larger than 8½ by 11 inches.
- (iii) In black ink.
- (iv) Text double-spaced. Footnotes and long quotes may be single spaced.
- (v) At least 12 point type.
- (vi) Margins at least 1 inch on each side.
- (vii) The original not bound or hole-punched, only held together with removable metal clips or the like. The copy that is filed or sent to the administrative law judge or Assistant Chief Counsel for Litigation, and the copy served on another party, need not meet this specification.
- (viii) The original has no tabs. The copy that is filed or sent to the administrative law judge or Assistant Chief Counsel for Litigation, and the copy served on another party, need not meet this specification.

(e) *Sending documents to the administrative law judge or Assistant Chief Counsel for Litigation.* Sending the document directly to the administrative law judge or to the Assistant Chief Counsel for Litigation is not a substitute for filing the original with the DMS, except for confidential information under § 406.117.

(f) *Viewing and copying the record.* Any person may view and copy the record, except for confidential information, as follows:

(1) During regular business hours at the Docket Management System, U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590-0001.

(2) Through the Internet at <http://dms.dot.gov>.

(3) By requesting it from the Docket Management System and paying reasonable costs.

§ 406.115 Serving documents on other parties.

(a) *Service required.* A person must serve on each other party at the time of filing a copy of any document filed with the Docket Management System. Service on a party's attorney or representative of record is adequate service on the party.

(b) *Method of service.* A person must serve documents by personal delivery or by mail.

(c) *Certificate of service.* A person may attach a certificate of service to a document filed with the DMS. Any certificate of service must include a statement, dated and signed by the individual filing the document, that the document was served on each party, the method of service, and the date of service.

(d) *Date of service.* The date of service is the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark. The date shown in the DMS index is not necessarily the date of service. It is the date the DMS received the document.

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a specified date after service by mail, 5 days is added to the prescribed period.

(f) *Service by the administrative law judge.* The administrative law judge must serve a copy of each document including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) *Service made.* A document is deemed served in accordance with this subpart if it was properly addressed; was sent in accordance with this subpart; and was returned, not claimed, or refused. Service is considered valid as of the date and the time that the document was mailed, or personal delivery of the document was refused.

(h) *Presumption of service.* There is a presumption of service where a party

or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

§ 406.117 Confidential information.

(a) *Filing confidential information.* If a party wants certain information that the party is filing not made available to the public, the party must do the following:

(1) Place the information in a separate sealed envelope and clearly mark the envelope "CONFIDENTIAL." At least the first page of the document in the envelope also must be marked "CONFIDENTIAL."

(2) Attach to this envelope a cover document marked "Confidential information filed with administrative law judge" or "Confidential information filed with Assistant Chief Counsel for Litigation." The cover document must include, at the least, a short statement of what is being filed, such as "Respondent's motion for confidentiality order."

(3) Unless such a motion has already been granted, enclose a motion for confidentiality order in accordance with paragraph (c) of this section. The motion must be in the sealed envelope if it contains confidential information; otherwise the motion must be outside of the sealed envelope.

(b) *Marked information not made public.* If a party files a document in a sealed envelope clearly marked "CONFIDENTIAL" the document may not be made available to the public unless and until the administrative law judge or the FAA decisionmaker decides it may be made available to the public in accordance with 49 U.S.C. 70114.

(c) *Motion for confidentiality order.* If a party is filing, is requested to provide in discovery, or intends to offer at the hearing, information that the party does not wish to be available to the public, the party must file a motion for a confidentiality order.

(1) The party must state the specific grounds for withholding the information from the public.

(2) If the party claims that the information is protected under 49 U.S.C. 70114, and if both the complainant and

the respondent agree that the information is protected under that section, the administrative law judge must grant the motion. If one party does not agree that the information is protected under 49 U.S.C. 70114 the administrative law judge must decide. Either party may file an interlocutory appeal of right under § 406.173(c).

(3) If the party claims that the information should be protected on grounds other than those provided by 49 U.S.C. 70114 the administrative law judge must grant the motion if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

(4) If the administrative law judge determines that the information is not necessary to decide the case or would not otherwise lead to the discovery of relevant material, the administrative law judge must preclude any inquiry into the matter by any party.

(5) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(6) If the administrative law judge determines that the requested material is necessary to decide the case, or would otherwise lead to the discovery of relevant material, and that a confidentiality order is warranted, the administrative law judge must—

(i) Provide an opportunity for review of the document by the attorneys of record off the record.

(ii) Provide procedures for excluding the information from the record, or order that portion of the record that includes confidential information be closed.

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(7) If an administrative law judge orders a record closed, in whole or in part: