



**INFORMATION PACKET ON**

**HOW TO BECOME  
A CERTIFICATED AIR CARRIER**

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**PART I**  
**APPLICATION PROCEDURES AND EVIDENCE REQUIREMENTS**

## AIR CARRIER AUTHORITY

Under Title 49 of the United States Code (“the Statute”),<sup>1</sup> anyone who wants to provide air transportation service<sup>2</sup> as an air carrier must first obtain two separate authorizations from the Department of Transportation: “safety” authority in the form of an Air Carrier Certificate and Operations Specifications from the Federal Aviation Administration (FAA),<sup>3</sup> and “economic” authority from the Office of the Secretary of Transportation (the Department) in the form of a certificate for interstate or foreign passenger and/or cargo authority issued under section 41102 of the Statute.<sup>4</sup>

Certificates may authorize either scheduled service or charter-only service. A certificate authorizing interstate<sup>5</sup> air transportation may be issued after a finding by the Department that the applicant is “fit, willing, and able” to perform the proposed service. The award of a certificate for foreign authority<sup>6</sup> must also be found to be “consistent with the public convenience and necessity.”

This packet contains information on how to obtain interstate and foreign certificate authority from the Department. Air carriers proposing to operate only small aircraft, that is aircraft with an original design capacity of 60 or fewer seats or with an original payload capacity of 18,000 pounds or less, are exempt from the certificate requirements and may obtain authority as an air taxi operator or commuter air carrier in accordance with the provisions of Part 298 of the Department's Regulations (14 CFR Part 298). Please see “How to Become a Commuter Air Carrier” for more information.

If you have any questions concerning the information in this document or the Department’s procedures for issuing certificates, please contact the Air Carrier Fitness Division on 202-366-9721.

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<sup>1</sup> Copies of the Statute may be obtained directly from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

<sup>2</sup> “Air transportation,” as defined by section 40102(a)(5) of the Statute, means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, in interstate or foreign air transportation.

<sup>3</sup> The requirements for obtaining FAA safety authority are contained in 14 CFR Parts 119, 121, and 135.

<sup>4</sup> There are certain exceptions to this rule. Section 40109 of the Statute allows the Department to grant exemptions from the certificate requirement where it finds that such exemptions are “consistent with the public interest.” Such exemptions may be granted to individual air carriers or to groups or classes of air carriers.

<sup>5</sup> “Interstate air transportation,” as defined in section 40102(a)(25) of the Statute, means operations between points in the United States; between points in the United States, on the one hand, and points in U.S. territories or possessions, on the other; or between points both of which are in U.S. territories or possessions.

<sup>6</sup> “Foreign air transportation,” as defined in section 40102(a)(23) of the Statute, means operations between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

Information on other types of air carrier authority may be obtained from the Department as follows:

For information on *commuter air carrier authority*, contact:

Air Carrier Fitness Division  
Department of Transportation  
X-56  
1200 New Jersey Ave. SE  
Washington, D.C. 20590  
(202) 366-9721

For information on *air taxi authority*, contact:

Program Management Branch  
Federal Aviation Administration  
AFS-260, Room 831  
800 Independence Avenue, SW  
Washington, DC 20591  
(202) 267-8166

For information on obtaining an *air carrier certificate from the FAA*, contact a local FAA Flight Standards District Office in your area or:

Flight Standards Certification Surveillance Division  
Federal Aviation Administration  
AFS-900, Suite 131  
45005 Aviation Drive  
Dulles, Virginia 20166  
(703) 661-0500

A list of Flight Standards Regional and District Offices may be obtained on the internet at:

[Flight Standards District Offices \(FSDO\)](#)

## **FILING AN APPLICATION**

A sample application for certificate authority is included in Part II of this packet. Internet links to CFR 14 Parts 201 and 302 of the Department's regulations, which discuss the rules of general applicability for filing applications, may be found at "Internet Resources" in this document.

## **Filing Fees**

Applicants must pay filing fees online at [www.pay.gov](http://www.pay.gov). The fees for filing applications for certificate authority are as follows:

Interstate scheduled certificate authority	\$ 850
Foreign scheduled certificate authority	\$ 900
Both interstate and foreign scheduled certificate authority	\$1,750
Interstate charter certificate authority	\$ 850
Foreign charter certificate authority	\$ 600
Both interstate and foreign charter certificate authority	\$1,450

## **Supporting Information**

At the time an application is filed, the applicant should submit supporting information to convince the Department it is “fit, willing, and able” to operate as a certificated air carrier. The evidentiary material required to be submitted with the application is detailed in section 204.3 of Part 204 of the Department's Regulations, a copy of which can be found in Part III of this packet. A discussion of these requirements is contained in the section below on “**Evidence Requirements.**” If an applicant is seeking both interstate and foreign certificate authority, it is required to file separate applications, however, the evidence in support of the applicant's fitness to operate need only be included with one of the applications and incorporated by reference in the other.

## **Confidential Treatment**

Should the applicant wish to seek confidential treatment for any portion of the fitness information submitted, it should use the procedures set forth in section 302.12 of the Department's Regulations. A sample of an application for confidential treatment is included in Part II. Information for which confidential treatment will generally be granted includes the specific fares to be charged, estimated revenue passenger miles, available seat miles, and projected load factor, as well as aircraft leases, loan agreements, and financial statements of individuals or entities (other than parent and/or sister companies) providing funding to the applicant. Conversely, absent a clear and justifiable reason for doing so, confidential treatment generally will not be granted for an applicant's current or historical financial statements, expense forecasts, or the identity of and resumes for key personnel. Applicants should bear in mind that requesting confidential treatment of documents may significantly slow the processing of a company's application while the Department reviews the confidentiality request. Therefore, applicants are advised to carefully review the need for such treatment and submit for the public record redacted versions of the documents at issue.

## Service and Filing of Applications

Applicants for certificate authority are required to serve their applications on persons who may have an interest in the proposed operation. In addition to these persons, a copy of the application should be provided to the FAA Flight Standards District Office with which the applicant has filed, or intends to file, its request for FAA authority.

The certificate application together with evidentiary material should be filed with:

U.S. Department of Transportation - Dockets Section  
1200 New Jersey Avenue, SE  
West Building  
W12-140 Dockets  
Washington, DC 20590  
Phone: (800) 647-5527

Alternatively, applicants may electronically file applications at <http://www.regulations.gov>.

The applicable application fees must be paid via [www.pay.gov](http://www.pay.gov).

## **PROCESSING THE APPLICATION**

Applications for certificate authority should be *complete* when filed, that is, all of the information required by section 204.3 to determine a company's fitness to operate, as discussed below in "**Evidence Requirements**," should be included. Applications should *not* be filed with the Department until after the applicant has progressed to the point where it has resolved all significant issues relating to its fitness. Thus, before filing an application, an applicant should have (1) determined its operating proposal, including identifying the aircraft it intends to use and the markets it intends to serve, and prepared complete revenue, expense, and traffic data supporting its plan, (2) identified all key management personnel, and (3) obtained the funding needed to meet the Department's financial fitness criteria, or, at a minimum, developed a reasonable and verifiable plan for doing so. **Filing incomplete applications will only result in delays in processing and the possible dismissal or rejection of the application.**

### **Staff Review**

Applications for certificate authority are processed under Subpart B of the Department's Procedural Regulations (14 CFR 302.201 *et seq.*). Upon receipt of an application, the Department's Dockets Section will assign it a docket number and place the application in a file which is available to the public at the Department's headquarters and via the internet at [www.regulations.gov](http://www.regulations.gov). The application will then be forwarded to the Air Carrier Fitness Division where it will be assigned to a staff analyst for review and processing.



If some additional or clarifying information is required, the staff analyst will so advise the applicant, usually by letter, and provide it with an opportunity, usually 30 days, to submit any required material. Any such subsequent filing, as well as any amendments to the application, such as changes in the type of authority requested or in the applicant's service proposal, should be filed with the Department's Dockets Section, referencing the docket number(s) assigned to the initial application(s).

Interested persons have 21 days from the date the application (or any subsequent amendment) is filed to submit answers to the application in support of or in opposition to the authority requested. If an answer is filed, the applicant has 14 days to file a reply.

### **Action by the Department**

After review of the filed documents, including any answers, the Department will decide on the procedures it will follow in handling the application.<sup>7</sup>

Because of the substantial drain that processing incomplete or poorly prepared applications places on the Department--particularly in diverting staff resources from processing the applications of persons who are well prepared--if an applicant is unable to provide complete information in its application or in response to the staff's initial information request, the Department may dismiss or reject the application. Generally, such action is taken "without prejudice" to the applicant's refile for certificate authority at a later date when it is able to present a complete application.

Where the application is complete, and where there appear to be no material issues of fact that cannot be resolved on the written record, the Department will usually act on the application by use of "show-cause" procedures.<sup>8</sup> In such cases, the Department's Assistant Secretary for Aviation and International Affairs will issue a **Show Cause Order** tentatively finding the applicant fit and proposing to issue it a certificate authorizing the requested service. A copy of the order will be sent to the applicant, any person who has filed an answer to the application, and interested FAA offices. A summary of the order will also be published in the Federal Register. The order will allow interested persons an opportunity

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<sup>7</sup> As part of its review, the Department will contact the FAA to determine the status of any application that the applicant has filed with that agency, and whether the FAA has uncovered any potential problems or concerns with the applicant. While an applicant may wish to pursue its Department and FAA authorities simultaneously, the FAA generally will not proceed to review an applicant's operations, maintenance, or training manuals unless it has been notified by the Department that there are no significant problems with the application for economic authority.

<sup>8</sup> Where there are substantial questions about whether an air carrier is fit to operate, the Department may issue a show-cause order proposing to deny the application. If an application raises substantive questions of fact, is controversial, or presents complex issues that cannot be resolved on the written record, the Department may direct that the matter be considered in an oral evidentiary hearing before an Administrative Law Judge. Once the application is assigned, the Judge will set a procedural schedule for exhibits, hearings, and briefs. After these procedures have been completed, the Judge will review the information submitted and the arguments on brief, and issue a recommended decision on the applicant's fitness to provide the air transportation it proposes. After the Judge issues a decision, the Department's Assistant Secretary for Aviation and International Affairs will review that recommendation and issue a final decision on the application.

(usually 14 days) to file comments and “show cause” why the Department should or should not adopt its proposed fitness findings and award of authority.

If no objections are filed, the Department will issue a **Final Order** finalizing the tentative fitness findings. If objections are filed, the applicant will have an opportunity to reply to them (usually 7 days) before further Department action is taken. Based on these responses, the Department will then determine what further procedural steps, if any, may be warranted, such as requesting additional information from the applicant or setting the case for hearing before an Administrative Law Judge.

In most instances, the Department will impose conditions on the applicant’s authority in the final order--such as a limit on the duration of the authority (*e.g.*, for one year), on the number, type, or size of aircraft that the applicant may operate, or on the type of service that can be provided. If, at a later date, the company wishes to expand its operations beyond those limits, it would need to notify the Department and establish its fitness to do so. In addition, new carriers will be required to file a first year progress report at the end of their first year of operations. These conditions are intended to enable the Department to monitor the carrier’s operations more closely, particularly during its first several years.

If an application for foreign authority is involved, the Department's final decision to grant or deny the requested authority is subject to review by the President of the United States, who has 60 days from the date the Department sends him the decision to review the action. If the Department's decision is not disapproved by the President, it will become final. Department actions on requests for interstate authority are not subject to review by the President, and are final at the time they are issued.

At the time the Department issues its final decision and award of authority, if the applicant does not hold an Air Carrier Certificate and Operations Specifications from the FAA authorizing it to conduct its proposed operations, the economic authority will not become effective until the applicant has received the required FAA authority and presented evidence of it to the Department. At the time it presents its FAA documents, the applicant must also supply certain updated fitness information and proof of insurance coverage (see the discussion below under “**Other Requirements**”), and meet any other conditions imposed by the Department in its final decision. Once the air carrier meets these requirements, the Department will then issue an **Effective Order**.

Under the Department's Regulations an applicant may *not* (1) advertise, list schedules, or accept reservations for its proposed air transportation until the Department issues its final decision on the applicant's certificate application, or (2) accept payment or issue tickets for its proposed air transportation until the certificate has been made effective by the Department. An applicant may advertise or list schedules for its proposed services between the time the Department issues its final decision on the application and the time the authority is made effective *only* if any such listings or advertisements prominently state “This service is subject to receipt of government operating authority.”

In calculating start-up time, an applicant should anticipate that the Department will require a minimum of four months to process the application beginning from the time a complete application is filed. Additional time would be required if objections are filed or complex or unusual issues are raised by the application. This estimate does not take into account the time required for completion of the Presidential review period with respect to applications for foreign authority, or to complete any necessary FAA certification work.

## EVIDENCE REQUIREMENTS

### **Fitness Test**

The Department uses a three-part test to determine the fitness of a company. First, it examines the **managerial competence of the applicant's key personnel** to determine whether they have sufficient business and aviation experience to operate an airline, and whether the management team, as a whole, possesses the background and experience necessary for the specific kind of operations proposed.

Second, it reviews the applicant's operating and financial plans to see whether the applicant has a reasonable understanding of the costs of starting its operations and either has on hand, or has a specific and verifiable plan for raising, the necessary capital to commence operations. Before being granted effective air carrier authority, the applicant must submit third-party verification that it has acquired the necessary capital to conduct its operations.

Third, the Department looks at the applicant's compliance record to see whether it and its owners and managers have a history of safety violations or consumer fraud activities that would pose a risk to the traveling public, or whether other factors indicate that the applicant or its key personnel are unlikely to comply with government laws, rules and directives.

In addition, the applicant must establish that it is owned and controlled by U.S. citizens.

The information required by Part 204 of the Department's Regulations (14 CFR 204, which is reprinted in Part III of this packet) is intended to provide the Department with a sufficient basis upon which to determine whether an applicant is qualified in each of these areas to provide the public with its proposed service.

The following pages contain a discussion of the data required by section 204.3 and which the Department routinely requests in processing certificate applications. An applicant should address each point below. If the answer to the information requested is "not applicable" or "none," please so state for each item.

Also described are some of the ***common mistakes*** made by applicants in their filings, the biggest of which is filing an incomplete application. Often, applicants view the filing of their applications with the Department as one of the first steps towards becoming an airline, not one of the last. Thus, some applications are filed without all of the key management positions filled or

when arrangements for financing have not been made or service proposals have not been finalized.

***Common mistakes*** also include not filing updated information if any changes occur in the applicant's ownership, management team, compliance history, financial position, or service proposal while its application is under review so as to render inaccurate any information or representations made previously in its application or in subsequent responses. If such changes occur, the applicant should file promptly a supplement to its application in the assigned docket describing the details of any such changes. Failure to do so will result in additional delays in processing the application to completion.

## **General**

The purpose of the information described below is to provide the Department with some background on the applicant, including information on the type of service being provided currently, if any, as well as that proposed.

### ***Data Required***

1. The name, address, telephone and fax numbers of the applicant, along with the name, position, phone number and email address of the applicant's point of contact for processing the application.
2. A narrative history of the applicant.
  - a. The narrative should include when the applicant was formed and by whom, any subsequent ownership changes, the nature of the business initially and how it has changed or grown, and the primary markets currently being served.
  - b. The narrative should also indicate the type of authority being requested in the application, the markets to be served, whether additional aircraft will be required in the proposed service, and whether other changes or additions in the applicant's management team, facilities, and operations will be made if the requested authority is received.
  - c. If the applicant has or proposes to establish maintenance or operations bases separate from its corporate offices, the locations of those bases should be indicated.
  - d. If the applicant intends to contract out any maintenance, training or other operational functions, the percentage and type of such contracts should be indicated.
3. A list of the applicant's current and/or proposed fleet of aircraft, including the number and seating/cargo capacity of each type and model of aircraft and whether they are or will be owned or leased.

- a. If the aircraft are currently leased, identify the lessor; if the aircraft will be leased, provide copies of letters of intent with the lessor.
  - b. For applicants that already operate aircraft, provide a sworn affidavit stating that each of these aircraft has been certified by the FAA and complies with all applicable FAA safety standards. For non-operating applicants, this affidavit should be submitted at the time the company's FAA documents are submitted to the Department to make its authority effective. (See Part IV of this packet for a sample of the affidavit required.)
4. A description of all authority the applicant holds or has held to conduct air transportation operations from state, federal, and foreign governments. This would include, for example, a certificate from the FAA, an air taxi registration with the Department, or a Canadian Transportation Agency license.
- a. If new or additional authority is needed from the FAA in order to conduct the proposed operations, the status of any application for that authority, and the name, telephone number, and address of the FAA personnel responsible for processing that application should be provided.
  - b. If no additional authority is needed, the name, address, and telephone number of the applicant's FAA principal operations inspector should be included.
  - c. By the time an application is filed with the Department for a certificate, the applicant should have also contacted its local FAA Flight Standards District Office and filed its Pre-Application Statement of Intent, or PASI, with that office. The applicant should include a copy of the PASI in its application.

**Common mistakes** in submitting background information include submitting a service proposal—with a description of the markets to be served, frequency of flights, number and type of aircraft to be used—which is inconsistent with the first year forecast of revenues and expenses provided as part of the applicant's financial documents; and failing to identify the FAA personnel responsible for the oversight of the applicant's operations and/or failing to include with its application a copy of its FAA Pre-Application Statement of Intent.

### **Corporate Structure and Ownership**

The purpose of the information described below is to provide the Department with information on the applicant's ownership structure to demonstrate that it is owned and controlled by U.S. citizens.

## ***Data Required***

1. The form of the applicant's organization (*e.g.*, sole proprietorship, partnership, corporation, or limited liability company), the state law(s) under which the applicant is organized, and the date of incorporation or organization.
2. If the applicant is a corporation or limited liability company, a statement provided by the Office of the Secretary of State, or other agency of the state in which the applicant is organized, certifying that the applicant is a company in good standing. This statement should reflect the applicant's corporate standing not more than one month prior to the date the application is filed.
3. A sworn affidavit stating that the applicant is a citizen of the United States.<sup>9</sup> (See Part IV of this packet for a sample of the affidavit required.) If any owners, officers, directors, or other persons who have the power to influence the applicant, whether through ownership, debt, position held, or other interest, are not U.S. citizens, state the name and citizenship of each, and describe each such person's relationship to, and interest in, the applicant. For more information about foreign interests, review the discussion of ***Issues Pertaining to Non-U.S. Citizen Involvement*** at the end of this section.
4. A description of the classes or types of the applicant's stock that are authorized, the number of shares of each class or type that are issued and outstanding, and the total number of shareholders of each class of stock.
5. A list of all persons (individuals or organizations) that own or control at least 10 percent of the stock of the applicant, indicating the number of voting shares and the corresponding percentage of the total shares outstanding that are held by each, along with their address, citizenship, and principal business.
  - a. If any stockholder is an organization, provide the name, address, citizenship, and principal business of the individuals who own or control at least 10 percent of the stock of the organization. If there are several layers of ownership by companies (*e.g.*, holding or parent companies), information on the stock ownership should be provided for each layer until the ultimate individual shareholders are reached.
  - b. If the applicant's stock is held by someone for the benefit or account of a third party, give the name, citizenship, and principal business of that person or organization.

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<sup>9</sup> Section 40102(a)(15) of the Statute defines a "citizen of the United States" as: "(1) an individual who is a citizen of the United States; (2) a partnership each of whose partners is an individual who is a citizen of the United States; or (3) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned and controlled by persons that are citizens of the United States."

c. If any of these persons are related by blood or marriage or have had any financial interest in, or serve or have served as an officer or director of any other air carrier, common carrier, or person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any aviation-related entity, that relationship should be described.

d. If any person or organization holds options to convert debt to equity or one type of stock to another type, identify the person or organization and discuss the circumstances under which such conversion may occur.

6. A list of the applicant's operating divisions and subsidiaries, if any, and of any other company (including any air carrier, common carrier, or person substantially engaged in the business of aeronautics) in which the applicant or any of the applicant's substantial owners (*i.e.*, those who own 10 percent or more of the stock) and officers (*i.e.*, the senior executives, such as Chief Executive Officer, President, Chief Operating Officer, Chairman of the Board, Vice Presidents, and General Manager) have a financial interest. The principal business of each of these entities and their relationship to the applicant should be discussed.

**Common mistakes** in submitting ownership information include not providing enough information to account for 100 percent ownership of the applicant; not providing all required ownership information on parent or holding companies or on their parents or holding companies; not fully disclosing or discussing the role of any foreign investors in the applicant's ownership or management; and providing share ownership information based on the total number of shares *authorized*, rather than on the number of shares actually *issued and outstanding* as required.

**Issues Pertaining to Non-U.S. Citizen Involvement.** During our review of an application for certificate authority, the Department's staff will examine the company's ownership structure to determine if the applicant satisfies all statutory citizenship tests and is under the ***actual control*** of U.S. citizens. In determining actual control, we examine the facts of a particular situation to decide whether a foreign interest will have a substantial ability to influence the carrier's activities.<sup>10</sup> Some of the factors we consider are set forth below. Before submitting an application for certificate authority to the Department, each applicant should consider the following factors as they pertain to foreign interest and control:

- *What is the total amount of voting stock and equity interest that a foreign interest can hold and the carrier will still be considered a U.S. citizen?* Generally, the likelihood of foreign control increases when a foreigner holds a larger percentage of equity. In some instances, the Department has approved up to 49% total equity ownership (comprised of

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<sup>10</sup> Past cases include *In the matter of the citizenship of DHL Airways, Inc. n/k/a ASTAR Air Cargo, Inc.*, Order 2004-5-10, issued May 13, 2004 at 8; *Acquisition of Northwest Airlines by Wings Holdings, Inc.*, Order 89-9-51, issued September 29, 1989, at 5; *Application of Discovery Airways, Inc.*, Order 89-12-41, issued December 22, 1989, at 10; *In the matter of USAir and British Airways*, Order 93-3-17, issued March 15, 1993, at 19; and *Application of North American Airlines, Inc.*, Order 89-11-8, issued November 6, 1989, at 6.

both voting and non-voting), but by statute foreigners cannot own, individually or in the aggregate, in excess of 25% of the voting stock.

- *In what instances has the Department approved total foreign equity interest (comprised of both voting and non-voting) in excess of 25% of the stock?* Generally speaking, foreign equity interests over 25% have only been permitted where the foreign investors have been nationals of countries with which we have open skies aviation bilaterals (liberal bilaterals in earlier orders). We note that an earlier decision, Laker Airways (Order 95-12-37), is inconsistent, has been superseded, and should not be used as guidance in these matters. Recently, the Department has further refined its policy with regard to actual control to allow, in appropriate circumstances, total foreign equity investments in excess of 25% when it was determined that the foreign investments were clearly passive and diffuse, with no suggestion of foreign control.

- *Does the foreign interest have power to veto or control the management structure, or is there a U.S. citizen interest that would tend to vitiate the foreign interest?* It is more likely that control will rest with a foreign interest where the foreign-held shares are owned by a single entity, or a group of entities acting in concert, and the U.S.-held shares are widely held, particularly if there is no commonality of interest among the U.S. shareholders. Conversely, where the U.S. shares are concentrated in a single entity or group of entities acting in concert, the U.S. interests are more likely to be in a position to exert control over the carrier.

- *Does the foreign investor have the right to name members of the board of directors or other key managers of the company?* By statute, two-thirds of the Board of Directors must be U.S. citizens. For purposes of the statute, a director named by a foreign owner is considered “foreign” or “non-U.S. citizen”, regardless of the individual’s nationality. The Department will examine the relative numbers, duties, and responsibilities of the individual directors and managers appointed by the foreign interest. For example, if the foreign interest is empowered to name only three of ten directors, the influence may not at first appear to be controlling; however, if those three are to include the majority of the members of one or more key committees, foreign control may exist. Moreover, the ability of an investor to name a greater portion of the total directors than the ratio of its equity investment may reflect the investor’s intention to influence the strategic decisions of the company and an enhanced ability to do so.

- *Are there provisions in the agreements that would permit the foreigner to cause a reorganization of the carrier? Do the agreements include buy-out provisions of the U.S. investor/owner by either the carrier or the foreigner investor?* These provisions would permit the foreign interests to buy-out the U.S. interests at amounts that may be greater than fair market value (FMV), and may prohibit the U.S. interests from selling their interest without approval. For example, one of the agreements may specify the buy-out of the U.S. shares by the carrier or foreign interests at a set amount, such as 25% above FMV.



- *Do corporate governance provisions or agreements among shareholders give undue influence to the foreign interests?* These are the “supermajority” provisions mentioned by the Inspector General. An example of such provisions would occur if a foreign investor had the right to name one-third of the directors, and important corporate actions required 75% approval by the board. As a result, the foreign interest would have a right to veto major decisions of the rest of the board.
- *Are the U.S. citizen shareholders functioning as nominees or agents for the foreign investors?* Foreign nationals wishing to invest in U.S. airlines have on occasion proposed ownership schemes where the voting shares they wished to own or control would be held nominally by U.S. citizens, including family members, employees, business partners, attorneys, etc. In such situations, the foreign investor usually provides the funds needed to acquire the stock held by the nominee. Often, the U.S. holder has no background, knowledge, or even apparent interest in the airline industry. Even if stock ownership is not involved, U.S. citizens may be considered nominees or agents of the foreign interest if they are hired by the foreign investors for their position with the air carrier, or otherwise have a history of affiliation with the foreign interest.
- *Are there business relationships or significant contracts between a foreign investor and one or more U.S. citizen shareholders that may cause the U.S. citizen(s) to be unduly influenced by the foreign national?* Even if the U.S. citizen is not an agent or nominee of a foreign investor, it is possible for influence to be exerted if the foreign investor has other business relations with the U.S. citizen. For example, the U.S. citizen may be beholden to the foreign investor if the foreign investor has loaned the U.S. citizen substantial sums of money for purposes unrelated to the air carrier or employs members of the U.S. citizen’s family. The influence may be heightened if the loan is subject to call, or other contractual obligations.
- *Has the foreign investor loaned or guaranteed loans for the carrier or provided it with lines of credit?* The Department does not generally regard debt, taken alone, as a source of foreign control. However, loan arrangements may not include security provisions that provide avenues of control to a foreign investor. Moreover, a provider of an installment loan or line-of-credit, particularly where such funds comprise the principal operating capital of the carrier, may be able to exercise control over the carrier’s operations if the lender has the ability to withhold funds or demand repayment if the carrier does not follow its instructions. In addition, under certain circumstances lenders are sometimes given options to acquire equity in the company. These circumstances, as well as the degree to which the carrier may be financially dependent on a foreign source of funds, are considered in evaluating the totality of circumstances regarding a carrier’s citizenship.
- *Are there any other significant business relationships between the foreign investor and the air carrier?* If the foreign investor is an airline, tour operator, freight forwarder, or is otherwise involved in an associated business where the ability to control the carrier could give the foreigner’s business a potential market advantage, the issue of foreign control will be closely scrutinized. Similarly, if the foreign investor has other significant business

relationships with the air carrier, such as providing its aircraft, handling its marketing, performing other administrative functions, or providing a substantial portion of its revenues, these relationships will be considered in the totality of circumstances present.

While the above discussion covers some of the factors we have relied on in past cases, no single factor or group of factors is determinative of control, and we emphasize that this list is not exhaustive. Our decisions are based on the totality of circumstances presented and each case is different. Factors that can be found in case precedent may be rendered redundant, and even obsolete, by changes in the regulatory, legal, and market environments, just as those conditions could result in other factors that we have not looked at previously. Moreover, factors found to result in control in one case may not be dispositive in another case because of overriding factors not present in the earlier case, and *vice versa*.

### **Management Expertise and Technical Ability**

The purpose of this information is to demonstrate that the applicant has a sufficient number of qualified, competent management personnel with the background and experience necessary for the kind of operations being undertaken.

#### ***Data Required***

The following information concerning the existing and/or prospective key management personnel<sup>11</sup> should be submitted:

1. A chart showing positions and operating divisions within the organization that depicts which positions and functions report to whom.
2. Each key personnel's position and responsibilities with the applicant and the date employed or to be employed.<sup>12</sup>
  - a. If an individual has been employed with the applicant for a number of years, indicate all positions held during that time, with the dates each position was held.

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<sup>11</sup> "Key personnel" refers to the President, Chief Executive Officer, Chief Operating Officer, General Manager, Chief Financial Officer, Vice President(s), the Director of Operations, the Director of Maintenance, the Chief Pilot, the Director of Safety, and the Chief Inspector, as well as the Chairman and members of the Board or other key officials who may not be involved with the day-to-day operation of the company but who are primary stockholders and/or whose influence on the actions or policies of the applicant is, or potentially could be, substantial.

<sup>12</sup> In addition to the key personnel noted above, if the applicant proposes to contract out any maintenance or training functions, the corporate position that will be responsible for overseeing those contracts should be identified along with the name, background, and credentials of the individual selected for this position. The applicant should also indicate to whom in the corporate structure this position will report, how the oversight will be accomplished, and whether the position is part-time or full-time.

- b. If any key personnel are employed or will be employed by the applicant on less than a full-time basis, state what percentage of the employee's time will be spent on the applicant's business, and provide details of his or her concurrent occupation(s).
3. A resume for each of the key personnel stating:
  - a. Full name, current address, and telephone numbers.
  - b. All previous employment (both aviation and non-aviation) including: name of employer, location (city, state), type of business, position held, description of responsibilities, and dates employed. If the previous employer held any aviation authority, state the type (*e.g.*, air taxi, commuter, fixed base operator, certificated air carrier). Any periods of unemployment should be accounted for.
  - c. Education and training, including names of institutions, dates attended, and any certificates or degrees received. If the person holds a certificate or license from the FAA (such as an Airline Transport Pilot certificate or Airframe & Powerplant Mechanic license), these, including their numbers, should be listed, as well as the number of recorded hours of flying time for the Chief Pilot.
4. The citizenship of each such person.
5. The amount of stock (or other interest) held in the applicant, if any, by each.
6. A description of the officerships, directorships, stock (if 10 percent or more), or other interests each holds in any other air carrier, common carrier, or person substantially engaged in the business of aeronautics.
7. For the key technical personnel (Director of Operations, Director of Maintenance, Director of Safety, Chief Pilot, and Chief Inspector), a statement that these individuals meet the qualifications for their respective positions as set forth in sections 119.65 and 119.67 of the Federal Aviation Regulations (14 CFR 119.65 and 119.67).

**Common mistakes** in submitting management team information include not having all key managerial positions, including those required by the FAA, filled; submitting incomplete resumes that do not list employer names and the type of business conducted by that employer, dates of employment, positions held, or date the employee left his/her last position and joined the applicant; submitting resumes with no information on non-aviation employment held or periods of unemployment, thereby creating employment period gaps; not including the FAA certificate or license number for persons holding ATP or A&P certificates; and listing technical personnel who will not be accepted for their positions by the FAA.

## **Financial Position and Operating Plans**

This information will be used to assess the financial position of the applicant, whether the applicant has a reasonable understanding of the costs of starting and conducting its operations, and whether it has access to the capital required to commence operations. Before being granted an *effective* certificate, an applicant must provide independent, third-party verification that it has available to it resources (*e.g.*, cash, lines-of-credit, or bank loans) sufficient to cover all of its pre-operating costs (*i.e.*, all of the costs incurred prior to the actual commencement of flight operations) plus the operating expenses that are reasonably projected to be incurred by the applicant during three months of “normal” operations.<sup>13</sup> In determining available resources, projected revenues cannot be included.<sup>14</sup>

### ***Data Required***

The following financial information about the applicant should be provided:

1. Balance sheets and income statements of the applicant and all relevant corporations,<sup>15</sup> together with their accompanying explanatory footnotes (including a description of the company's significant accounting policies, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization), for the three most recent calendar or fiscal years,<sup>16</sup> and for a period ending *no more than three months prior* to the date of filing. This requirement may be met by the submission of financial statements,

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<sup>13</sup> Because projected expenses during the first several months of operations do not include all costs that will be incurred during a “normal” or average period of operations, the three-month standard is calculated by dividing the applicant’s estimated total first year operating expenses by four. In addition, if the applicant’s most recent balance sheet shows a negative working capital balance for any ongoing operations (*e.g.*, air taxi, aircraft leasing, or fixed base operation), the amount of that working capital deficit will be considered a pre-operating expense in calculating the amount of funds that the applicant must have available to meet the financial fitness criteria for the proposed operations.

<sup>14</sup> This financing guideline should not be considered a “zero revenue test”; that is, an applicant should not construct an artificial three-month projection showing reduced operating costs based on the theory that if there are no revenues there will be fewer variable flight and customer-related expenses, and that a smaller capital reserve will therefore be needed.

<sup>15</sup> “Relevant corporation” includes the applicant, any predecessor of the applicant (including any company whose operations were acquired by, or merged with, the applicant); any company in which the directors, principal officers or owners have or once had a substantial interest, or any organization which has a significant financial or managerial influence on the applicant, *e.g.*, (1) a parent corporation; (2) any entity that holds more than 50 percent of the outstanding voting stock of the applicant; (3) any entity that holds between 20 and 50 percent of such stock and which has significant influence over the applicant as indicated, for example, by at least a 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies; and (4) any subsidiary of the applicant. However, unless specifically requested by the Department, an applicant need *not* include financial data for those companies that are “relevant corporations” **only** because one or more of the applicant’s directors, principal officers or owners have or once had a substantial interest in them.

<sup>16</sup> If an applicant has been in business less than three years, only information for as long as it has been in business is required, unless there is a predecessor company. In the latter instance, information on the predecessor company is necessary. For new companies (those without any prior operations), a pre-operating balance sheet giving a complete description of the financial resources available to mount the proposed services should be filed.

preferably audited, or 10K and/or 10Q reports filed with the Securities and Exchange Commission.

- a. The financial documents should include a statement as to who prepared them, his or her qualifications and relationship, if any, to the applicant, and whether they were prepared in accordance with Generally Accepted Accounting Principles.
  - b. If an annual audit, review, or compilation by an independent CPA is performed, the name and address of the firm, and type of services provided should be listed.
2. Statements which include a description of the following:
- a. Any liens or encumbrances against any of the applicant's or any relevant corporation's assets, including those pledged as collateral for any outstanding obligations.
  - b. Any major commitments into which the applicant or any relevant corporation has entered during the past 6 months, or proposes to enter into during the next 6 months, including bank or other institutional financing, private financing, issuance of bonds or stock in the applicant, or major contracts to perform services.
  - c. Any transactions in which the applicant or any relevant corporation sold or exchanged any major assets (aircraft, land, buildings, etc.) during the past 6 months, or plans to sell or exchange within the next 6 months, including how any funds realized from those transactions were, or are intended to be, used.
  - d. Any liabilities of the applicant or any relevant corporation that are more than 60 days past due at the time of the application, including the amount and the circumstances under which they are past due and will be paid.
  - e. Any contingent liabilities that may have an effect on the applicant's or any relevant corporation's financial posture (e.g., lawsuits, pending judgments), including plans to meet those obligations.
  - f. Any events that occurred after the preparation of the most recent financial statements that may have a significant impact on the financial position or on the operations of the applicant or any relevant corporation. If no such events have occurred, provide a statement to that effect.
3. The applicant's service proposal and a forecast balance sheet and profit and loss statement (broken down by month or by quarter) for the first twelve full months of actual flight operations conducted under the certificate authority at issue. These documents should include ample notes explaining the basis for the amounts shown and whether the statements were prepared on a cash or accrual basis. The description should be in sufficient detail to

allow the Department's staff to replicate the mathematics involved and to determine the reasonableness of the forecast.

The revenue forecast should indicate:<sup>17</sup>

- a. For applicants for *scheduled* authority, the proposed markets and number of daily flights in each market; for applicants for *charter* authority, the types of charters to be operated (*e.g.*, public, single-entity, wet lease, Department of Defense) and the proposed geographic areas to be served.
- b. The type, model, seating/cargo capacity, and number of the aircraft to be used.
- c. The number of passengers or amount of cargo to be carried and expected load factors.
- d. The fares or rates to be charged, and the resulting gross revenues.
- e. The total number of revenue block hours and revenue miles expected to be flown, and the extent of any seasonal traffic peaks.

The expense data should show:

- a. Detail by expense category (direct and indirect), indicating how the amounts were computed. Applicants proposing to operate more than one aircraft type or model should include separate estimates of expenses for training, maintenance, preparation of manuals, etc., for each aircraft type or model.
- b. For indirect expenses, if the applicant is engaged in other aviation-related operations (*e.g.*, aircraft leasing or repair station), expenses should be allocated on a rational basis between the proposed certificated operations and the other operations, with appropriate explanations. The applicant should prepare a consolidated forecast income statement for the entire business as well as separate forecast statements for each operating segment, including the proposed certificated operation.
- c. If aircraft or other facilities are to be acquired to conduct the proposed services, a description of the plans for obtaining and financing those items should be provided.

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<sup>17</sup> If the applicant requests confidential treatment under 14 CFR 302.12 of the Department's Rules of Practice, the Department will generally grant confidentiality to information identifying the specific markets to be served, proposed frequency of service, fares, estimated revenue passenger miles and available seat miles, and projected load factor. However, if the applicant requests confidential treatment of information identifying its proposed markets and related traffic forecasts, it must provide for the public record a brief description of the type of markets/cities to be served (*i.e.*, short-, medium-, or long-haul markets, from small, mid-size, or large cities) and the total number of flights and revenue block hours to be performed.

4. An estimate of the amount of capital the applicant will need to commence operations which shows the basis of the estimate (*e.g.*, the amounts for pre-operating costs, including aircraft deposits or leases, office and hangar space, insurance, salaries, training, FAA and Department certifications, working capital, etc.).
5. A description of the proposed form and source of capital to support the applicant's operations.
  - a. If the resources of an individual(s) or other organization(s) will be made available to the applicant to support its operations, provide a statement from such individual(s) or organization(s) of the amount of such available resources and the terms or conditions under which such funds will be provided. Copies of the personal or corporate financial statements of the individual(s) or organization(s) should also be provided. Such documentation should clearly establish the capability of the individual(s) or organization(s) to fulfill any financial commitment made to or on behalf of the applicant. In this connection, the liquidity of any assets, other than cash, contained in these documents should be made clear through appropriate footnotes (*e.g.*, the current market value of stocks and bonds that can be readily converted to cash should be noted). Whenever possible, third-party verification of the assets and values should be provided (*e.g.*, letters from banks or stockbrokers holding liquid assets, or recent appraisals of real assets).
  - b. If borrowed capital or a line-of-credit is to be employed, the total amount, current balance, source, security, provisions to convert the debt to equity, and terms of repayment to the lender should be stated. Verification of this information from the lender should be provided.
  - c. If financing is to be obtained through a private stock offering, verification from the underwriter as to the status of the offering should be provided and copies of private placement agreements or offering documents should be submitted. If capital is to be sought through a public stock offering, copies of the offering documents filed with the Securities and Exchange Commission should be included.
  - d. A letter from the applicant's bank confirming the amount on deposit and bank loans and lines-of-credit, if any, should be provided.
6. A description of all outstanding judgments against the applicant, relevant corporations, key personnel employed by each, or any person having a substantial interest in the applicant.
  - a. For judgments of more than \$5,000, include a brief summary of the circumstances leading to each judgment, the amount of each judgment, the party to whom it is payable, how long it has been outstanding, and its current status.
  - b. For judgments of less than \$5,000, the list need only identify the company or person involved and the total amount of the judgment still owed.

***Common mistakes*** in submitting operating plans and financial information include not having a firm plan for obtaining the necessary financial resources; not submitting third-party verification of available or proposed funds; not submitting current (*i.e.*, to within three months) financial statements; not including enough notes in the financial statements to understand what the entries represent (*e.g.*, an amount for fixed liabilities without detailing what those liabilities are); and not including all expected forecast expenses or enough details to enable the Department to replicate the calculations used in arriving at the cost and revenue estimates (*e.g.*, a single figure for “salaries” without detailing whose salaries at what amounts are included).

### **Compliance Disposition**

The purpose of evaluating compliance disposition is to assure that the company and the personnel running and controlling the company do and will abide by the laws, rules, and regulations governing the applicant's operations and that management will be diligent in maintaining safe operations.

### ***Data Required***

The following information about the compliance history of the applicant, its owners, related companies, and their key personnel should be filed:

1. A description of the current status of all pending enforcement actions and formal complaints<sup>18</sup> involving the Statute, and the rules and regulations of the Department, including the FAA, involving the applicant, its key personnel (employed or to be employed), relevant corporations, including any other company in which the directors, principal officers, or owners of the applicant have or once had a substantial interest, or persons having a substantial (*i.e.*, 10 percent or more) interest in any of these companies.<sup>19</sup>

The investigation, complaint or action should be identified, together with a brief summary of the circumstances involved and its current status.<sup>20</sup> By “actions” or “complaints,” we mean those that have actually been filed with or taken by some official agency such as the Department, including the FAA, or a state, irrespective of whether the company or person

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<sup>18</sup> Although the applicant is not required to specifically report enforcement actions that have been closed, the Department may request additional information on such actions, particularly if they involved an FAA certificate action or voluntary suspension of operations or other serious charges against the applicant or any of the persons or companies listed above.

<sup>19</sup> Pending cases against a company in which the directors, principal officers or owners of the applicant *once had* a substantial interest need only be reported if these cases were opened for actions that occurred while the individual(s) identified held ownership and/or key positions with that company.

<sup>20</sup> Special attention should be paid to the Directors of Maintenance, Operations, and Safety and the Chief Pilot and Chief Inspector, as persons holding these positions are more likely than others to be cited for FAA violations.



believes it was or is guilty. For example, if the FAA has proposed a civil penalty in an enforcement action against a company, that FAA action must be reported.

2. If any of the persons listed in paragraph 1 above were affiliated (as an officer, director, or stockholder) with any air carrier or other aviation-related company which, at the time of such affiliation, was found to have committed knowing, willful violations of the Statute or any order, rule or regulation issued pursuant to that Statute, such actions should be described.

3. A description of any charges (civil or criminal) within the past 10 years brought against any of the persons or companies listed above, of fraud, felony, or antitrust violations, or of unfair, anticompetitive or deceptive business practices, including their final disposition or current status.

4. A description of any aviation-related accidents or incidents which the applicant, its personnel, or any relevant corporation has had either during the year preceding the date of the application, or at any time in the past if the matter remains under investigation by the FAA, the NTSB, or by the company itself. This includes:

a. The date of the occurrence, the type of flight (Part 121, Part 135, etc.), the number of passengers on board, the extent of injuries to persons and damage to the aircraft, the name of the pilot, and any other pertinent information available. Copies of the pilot's reports, if available, should be filed.

b. The FAA and the NTSB file numbers, if known, for each accident and incident, and the findings of the NTSB and/or the FAA, including any violations cited against the company or any of its personnel.

c. A description of any positive actions taken by the company as a result of the occurrence, if any was appropriate.

**Common mistakes** in submitting compliance information include not disclosing all required or relevant compliance matters. Applicants should consider any matter relating to safety violations or consumer fraud activities involving the applicant, its principals or key personnel or companies in which those individuals have or had a substantial interest (either ownership or management) as relevant and reportable. **In most instances, the failure to disclose the information is far more damaging than the matter being disclosed, since it is likely to cause delays in processing the application or even the dismissal or denial of the application for providing false or misleading information about the compliance background of the applicant and its principals.**

## Certification

The following certification must be included in all written submissions filed by the applicant in connection with its application:

Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant*], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

## OTHER REQUIREMENTS

### Accident Plans

Different from Manifest

Section 41113 of the Statute requires certificated air carriers to develop and submit to the Department and the National Transportation Safety Board a plan (“accident plan”) to address the needs of families of passengers and other victims involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life. (See the copy of the Aviation Disaster Family Assistance Act of 1996 included in Part III of this packet.) The requirement to file an accident plan applies not only to passenger air carriers but also to all-cargo air carriers, which must file a plan to cover any employee or third-party accident victims, such as cargo attendants, non-revenue passengers, or persons on the ground. Section 41113(b) of the Statute describes the specific contents of the accident plans. The accident plan to be submitted to the Department should be filed separately in Docket DOT-OST-96-1960 and should *not* be included in the application for certificate authority, although a statement that the plan has been so filed should be included in the application. The copy to be submitted to the National Transportation Safety Board should be sent to the following address:

Office of Public Affairs  
National Transportation Safety Board  
490 L’Enfant Plaza East, SW  
Washington, DC 20594

Please note that the Department cannot issue an applicant any requested certificate authority unless it has complied with this requirement.

## **Passenger Manifest Information**

Part 243 of the Department's regulations was adopted to ensure that the United States Government has prompt and adequate information in case of an aviation disaster occurring on a covered international flight segment. A "covered flight segment" is defined in section 243.3 as:

"a passenger-carrying flight segment operating to or from the United States (*i.e.*, the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States."

The rule requires that all certificated air carriers collect the full name of each U.S. citizen passenger traveling on such flight segments, and solicit a contact name and telephone number. In the case of an aviation disaster, the carrier involved would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. The Part 243 requirements apply not only to passenger carriers but also to all-cargo carriers, since they could transport cargo handlers and other persons meeting the definition of "passenger" in section 243.3.

Section 243.13 requires that each certificated air carrier that operates one or more covered flight segments file with the Department, via [www.regulations.gov](http://www.regulations.gov), in Docket DOT-OST-1998-3305 a brief statement summarizing how it will collect the passenger manifest information and transmit it to the Department of State following an aviation disaster. If the certificate authority sought would authorize the applicant to operate a covered flight segment, even though there may be no immediate plans to do so, the applicant should file the summary statement required by section 243.13. If the applicant does not intend to operate any covered flight segments in the foreseeable future, the applicant must file in Docket DOT-OST-1998-3305 a statement so stating, and also stating that the applicant will not operate any covered flight segment unless and until it has filed the summary required by section 243.13.

The statement or summary to be submitted to the Department should be filed separately in Docket DOT-OST-1998-3305. ■ The applicant should also include a statement in its application confirming that the information complying with Part 243 has been filed in the appropriate docket. Summaries already filed by air carriers under section 243.13 are available for public inspection in Docket DOT-OST-1998-3305, and can be accessed at [www.regulations.gov](http://www.regulations.gov). The applicant may wish to review these summaries for ideas on how it can best implement the data collection requirements of Part 243.

## **Insurance and Limits of Liability**

Prior to conducting any operations, an air carrier must also meet the insurance requirements set forth in Part 205 of the Department's rules by filing a Certificate of Insurance (OST Form 6410) with the appropriate branch of the FAA<sup>21</sup> and providing a copy of this form to the Air Carrier Fitness Division.<sup>22</sup> Instructions for filling out OST Form 6410 are included in Part IV of this packet.

Additionally, Part 203 of the Department's regulations requires that certain U.S. and foreign air carriers waive the passenger liability limits and certain carrier defenses in the Warsaw Convention in accordance with the provisions of Agreement 18900, dated May 13, 1966 (the Montreal Agreement).<sup>23</sup> Accordingly, all U.S. and foreign air carriers must have on file a signed counterpart to this agreement. This requirement applies whether or not the applicant proposes to provide foreign air transportation. This can be accomplished by filing OST Form 4523 (an original plus three copies) separately with the Department's Dockets Section in Docket DOT-OST-1995-236. An applicant should also provide a copy of the updated Form 4523 within its application. OST Form 4523 may also be uploaded to the Docket via [www.regulations.gov](http://www.regulations.gov). A copy of OST Form 4523 is in Part IV of this packet.

## **Contingency Plan for Lengthy Tarmac Delays**

14 CFR Part 259, Enhanced Protection for Airline Passengers, requires that all certificated or commuter air carriers operating scheduled passenger service or public charter flights with aircraft originally designed to have a passenger capacity of 30 or more seats, must adopt a contingency plan in the event of lengthy tarmac delays, at each U.S. airport it serves.

Further, on February 14, 2012, President Obama signed the FAA Modernization and Reform Act of 2012 (the "Act") into law. Among other things, the Act requires U.S. certificated or commuter carriers that operate scheduled passenger service or public charter service using any aircraft originally designed to have a passenger capacity of 30 or more seats, to submit contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval. The Act also requires each covered air carrier to ensure public access to its plan after DOT approval, by posting the plan on its website.

Air carriers may file their plan at a designated DOT website:

<http://filingtarmacdelayplan.dot.gov>.

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<sup>21</sup> A completed OST Form 6410 should be sent to the FAA's Program Management Branch, AFS-260, 800 Independence Avenue, SW, Washington DC, 20591.

<sup>22</sup> It is not necessary for applicants to file evidence of the higher insurance coverage required for scheduled passenger operations under Part 205 at the time the application is filed with the Department. However, evidence of such insurance as shown on OST Form 6410 should be filed when the applicant is ready to start certificated operations.

<sup>23</sup> Participation in the Montreal Agreement shall constitute a special agreement between the air carrier and its passengers as a condition of carriage that a liability limit of not less than \$75,000 (U.S.) shall apply under Article 22(1) of the Warsaw convention for passenger injury and death.

Any applicant for certificated or commuter authority, prior to being made Effective, must provide evidence to the Air Carrier Fitness Division that it has an approved Contingency Plan for Lengthy Tarmac Delays on file with the Department of Transportation's Office of Aviation Enforcement and Proceedings, as required by the Act.

### **Name/Tradename Registration**

Under Part 215 of the Department's rules, air carriers may only hold out services to the public using names authorized by the Department as listed on its certificate or as otherwise approved in a written notice.

In order to change its name or register a tradename, an air carrier should notify the Department in writing. The Department construes any application for initial, reissued or transferred certificate authority as containing a "registration" of the intended name. If an air carrier wishes to register a tradename without seeking reissuance of its underlying authorization (*ie*, as a stand-alone action), it must pay a \$56.00 tradename registration fee via [www.pay.gov](http://www.pay.gov). Additionally, confirmation that the air carrier filed an updated OST Form 4523 (which includes the new name) in Docket DOT-OST-1995-236, should accompany any filing. See above for information regarding Form 4523.

It is the applicant's responsibility to notify any other air carriers with the same or similar name of its intent to register the new name and then to certify to the Department that it has performed this notification. Additionally, should it come to the Department's attention that another air carrier has a similar name, the Department will advise the applicant to notify such similarly-named air carriers.

While the Department may prohibit the use of names that may be deceptive or that may otherwise result in significant public confusion, as a general rule, it does not intervene in company disputes over the use of names. Such disputes should be resolved between the affected parties with reference to the appropriate trademark laws.

The Department will acknowledge a trade name registration when it acts on an applicant's request for initial certification, or for transfer or reissuance of its authority. A notice will be issued registering the tradename if filed as a stand-alone request.

### **CONTINUING FITNESS**

Once a company has been found fit initially, it becomes subject to the requirements of 49 U.S.C. 41110(e) which provide that the company must remain fit in order to continue to hold its authority to provide air transportation services. Periodically the Department will assess changes in ownership, management, financial condition, and operations that may affect an air carrier's continuing fitness since its initial DOT authorization or last fitness review, and will request updated information from the air carrier in order to conduct a Continuing Fitness Review.

## **Operating Limits**

In order to ensure that a company remains fit after it is given effective authority, the Department may impose conditions on the company's operations--such as a limit on the duration of the authority (*e.g.*, for one year), on the number, type, or size of aircraft that the applicant may operate, or on the type of service that can be provided. If, at a later date, the company wishes to expand its operations beyond those limits, it would need to notify the Department and establish its fitness to do so. These conditions are intended to enable the Department to monitor the carrier's operations more closely, particularly during its first several years.

## **First Year Progress Report**

Once an air carrier is granted the authority for which it seeks, it is required to submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The submission of a first year progress report was adopted as policy by the Department to aid in monitoring the fitness of new air carriers. The report should include a description of the air carrier's current operations (number and type of aircraft, principle markets served, total number of full-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current senior management and key technical personnel. If any substantial changes in personnel have been made since the air carrier was found fit, the Department requires the air carrier to provide updated resumes.

## **Substantial Changes**

If, after the commencement of air service, substantial changes are planned or occur, such as a change in ownership, a major change in the management team, a major expansion in operations (*e.g.*, going from the use of "small" to "large" aircraft), or a filing for protection from creditors under Chapter 11 of the U.S. Bankruptcy Code, the Air Carrier Fitness Division must be notified promptly so it may determine whether the company will remain fit to operate. In the case of a proposed change in ownership, restructuring, or recapitalization, air carriers are requested to provide a notification thirty (30) days in advance of the scheduled closing. Also, in such cases, the air carrier should review the discussion of **Issues Pertaining to Non-U.S. Citizen Involvement** under the **Corporate Structure and Ownership** section in Part I of this information packet to identify potential fitness complications due to any foreign interests in the air carrier. After receiving the company's description of the proposed substantial change, the staff of the Air Carrier Fitness Division will inform the company what additional information it must file to support its fitness to continue operating in light of the proposed change.

## **Dormancy**

If an air carrier does not institute air transportation operations within one year of being found fit by the Department to do so, its economic authority will be terminated for reason of dormancy as provided in section 204.7(a) of the Department's Regulations. (See section 204.7 contained in Part III of this packet.)

On the other hand, if an air carrier starts its air service within one year and subsequently ceases that service, its economic authority is automatically suspended and it has one year from the date of the cessation to resume service or that authority will be terminated for dormancy (see section 204.7(b)). Any air carrier proposing to resume service within the one-year period must file with the Department's Dockets Section, at least 45 days before the date on which service is expected to resume, a notice of such intent and updated fitness information as required by section 204.3. The air carrier may not recommence service unless and until it is authorized to do so by the Department. If the air carrier wishes to resume air service in less than 45 days, it may request a waiver from the 45-day advance notice requirements of section 204.7. Any such waiver request must be filed with Dockets or uploaded via [www.regulations.gov](http://www.regulations.gov). A \$280 filing fee must be paid on [www.pay.gov](http://www.pay.gov).

If, however, the air carrier will not be able to commence or recommence operations before the end of its one year, it may request a waiver from the revocation provisions of section 204.7. Such waivers are not granted routinely, but only where "good cause" is shown. In showing good cause, the company would have to provide adequate evidence that it still meets the Department's fitness criteria and that it has completed nearly all of the steps to initiate or resume operations (*e.g.*, has the necessary personnel, financial resources, and aircraft, and has resolved any problems with the FAA). The waiver request must be filed before the end of the one-year dormancy period with Dockets or uploaded via [www.regulations.gov](http://www.regulations.gov). A \$280 filing fee must be paid online at [www.pay.gov](http://www.pay.gov). (Sample waiver request applications are contained in Part II of this packet.)

## **Transfer of Authority**

Certificates are not transferable without prior Department approval. Applications for transfer of certificate authority should be filed jointly by the transferor and the transferee with the Department's Dockets Section at least three months in advance of the proposed effective date of the transfer. Additional time would be required if objections are filed or complex or unusual issues are raised by the application. Applicable filing fees, to be paid via [www.pay.gov](http://www.pay.gov), are \$290 (interstate authority) and \$255 (foreign authority). Under section 41105 of the Statute, in order to approve a transfer, the Department must find that the proposed transfer is "consistent with the public interest," that is, that the transferee is fit to conduct the proposed operations. The Department must also analyze the effects of the transfer on (1) the viability of each air carrier involved in the transfer, (2) competition in the domestic airline industry, and (3) the trade position of the United States in the international

air transportation market. Applicants for a certificate transfer should describe the circumstances of the transfer, attach evidence supporting the fitness of the transferee as set forth in section 204.3, and provide sufficient information to enable the Department to analyze the effects of the transfer as noted above. In addition, a balance sheet for the air carrier immediately prior to and immediately following the projected closing date of the transfer, as well as copies of all agreements between the transferor and transferee, should be filed. (A sample application is contained in Part II of this packet.)

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### **Internet Resources**

Department of Transportation -- [www.dot.gov](http://www.dot.gov)

Federal Aviation Administration – [www.Faa.gov](http://www.Faa.gov)

To pay application fees- [www.pay.gov](http://www.pay.gov)

To file application electronically – <http://www.regulations.gov>

**[Click here for Applicable Airline Regulations](#) in 14 CFR Parts 200, 201, 203, 204, 205, 215, 298, and 302**

[Click here for 14 CFR Part 300 - Procedural Regulations](#)

[Click here for 14 CFR 389.25 - Information about filing fees](#)

[Click for Downloadable and fillable OST Insurance forms 6410 and 6411](#)

To file a tarmac delay plan –go to <http://filingtarmacdelayplan.dot.gov>.





## PART II

### SAMPLE APPLICATIONS

The following are sample applications which may be used as templates:

- (1) an application for air carrier authority
- (2) A sample certificate of service
- (3) a motion to withhold information from public disclosure
- (4) a notice of intent to resume service following a cessation of operations
- (5) an application for a waiver from the 45-day advance filing requirement of 14 CFR 204.7 to resume service
- (6) an application for a waiver from the revocation-for-dormancy provisions of 14 CFR 204.7
- (7) an application for the transfer of certificate authority.

The information in the brackets [ ] should be filled in or deleted as appropriate. For example, an applicant requesting only interstate charter authority under section 41102 of the Statute would delete the references to foreign and scheduled authority.

Material in support of the applicant's fitness should be submitted as exhibits or attachments to the application. Each exhibit or attachment should be identified by number (for example, Exhibit 1, Exhibit 2, etc.) and each page of an exhibit should be numbered consecutively. If an applicant is seeking both interstate and foreign authority, the evidence in support of the applicant's fitness to operate need only be included with one of the applications and incorporated by reference in the other.

Sample Application for Air Carrier Authority

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under  
49 U.S.C. 41102 to engage in [*interstate*] [*foreign*] [*scheduled*]  
[*charter*] air transportation

DOCKET [*will be  
completed by DOT*]

APPLICATION OF  
[NAME OF APPLICANT]

Communications with respect to this document should be sent to:

*[Name, mailing address, telephone and  
fax numbers, and email address of  
persons to be contacted]*

*[Date of Application]*

Notice: Any person who wishes to support or oppose this application must file an answer by  
*[21 days after receipt of the application by the Department of Transportation]* and serve that  
answer on all persons served with this application.

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under  
49 U.S.C. 41102 to engage in [interstate] [foreign] [scheduled]  
[charter] air transportation

DOCKET [will be  
completed by DOT]

APPLICATION OF  
[NAME OF APPLICANT]

[Name of Applicant] submits this application for a certificate of public convenience and necessity authorizing [interstate]/[foreign] [scheduled]/[charter] air transportation pursuant to section 41102 of Title 49 of the United States Code (“the Statute”).

In support of its application [Name of Applicant] states the following:

Applicant is a [corporation] [partnership] [sole proprietorship] [limited liability company] organized on [date] under the laws of the State of \_\_\_\_\_. Its address, telephone and fax numbers, and email are: \_\_\_\_\_

Applicant is a citizen of the United States as defined in section 40102(a)(15) of the Statute.

*[Describe the ownership of the applicant and indicate whether its officers, directors, and key personnel are U.S. citizens. If not, indicate their nationality and their relationship to, or interest in, the applicant.]*

Applicant is [newly formed] [currently engaged in (describe current business)].

Applicant requests authority to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation of persons, property, and mail as follows:\*

*[Describe proposed operations, including markets to be served, and aircraft to be used.]*

---

\* The applicant does not have to request authority to carry persons, property, and mail. It may request passenger only, cargo only, mail only, passenger and cargo, passenger and mail, or cargo and mail authority.

Information in support of the applicant's fitness to conduct the proposed air transportation operations is contained in [*Exhibits*]/[*Attachments*] 1 through \_\_\_\_.

*[If applying for both interstate and foreign authority, add the following paragraph to the application for foreign authority:*

Concurrently, applicant is seeking authority to engage in interstate air transportation. Information in support of the applicant's fitness to operate has been included with that application and is incorporated by reference here. Additional information in support of the applicant's proposed foreign air transportation operations is included as [*Exhibits*]/[*Attachments*] 1 through \_\_\_\_.]

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant*], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

[*Signature and Title*]

Attachments [*certificate of service, and exhibits and information required under section 204.3*]

**Sample Certificate of Service**

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing application for [interstate]/[foreign] [scheduled]/[charter] air transportation authority by first class mail, postage prepaid, upon the persons shown in the following service list.

[Signature and title]

[Date of Service]

SERVICE LIST

[See 14 CFR Section 302.203(b) for service list requirements]

**Sample Motion for Confidential Treatment of Documents**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under  
49.U.S.C. 41102 to engage in [interstate]/[foreign] [scheduled]/  
[charter] air transportation

DOCKET [will be  
completed by DOT]

MOTION OF [NAME OF APPLICANT]  
TO WITHHOLD INFORMATION FROM PUBLIC DISCLOSURE

Communications with respect to this document should be sent to:

*[Name, mailing address, telephone and  
fax numbers, and email address of  
persons to be contacted]*

*[Date of Application]*

Notice: Any person who wishes to support or oppose this application must file an answer by  
*[7 days after receipt of the application by the Department of Transportation]* and serve that  
answer on all persons served with this filing.

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under 49.U.S.C. 41102 to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation

DOCKET [will be  
completed by DOT]

MOTION OF [NAME OF APPLICANT]  
TO WITHHOLD INFORMATION FROM PUBLIC DISCLOSURE

Pursuant to section 302.12 of the Department's Rules of Practice, [name of applicant] hereby moves to withhold from public disclosure [specify material to be withheld, e.g., Exhibits 2, 5 and 7 to the above-captioned application for the issuance of certificate authority]. These documents are being filed with this Motion in a sealed envelope marked "Confidential Materials - Rule 12 Treatment Requested." In support of this Motion, [name of applicant] submits the following:

*[For each document for which non-disclosure is requested, describe the document in general terms (e.g., the applicant's internal business or marketing plan, letter of intent from aircraft lessor, shareholder agreement, personal financial statements of owner or lender).]*

The information [name of applicant] seeks to withhold from public disclosure is (1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential. Moreover, release of this information would cause substantial harm to the competitive position of [name of applicant] or the individual from whom the information was obtained.

*[Explain how the information for which non-disclosure is requested falls into one or more of the categories discussed in the preceding paragraph, e.g., "Exhibit 3 contains sensitive financial and commercial information, including proprietary details of the applicant's marketing research, that could be used by competitors to impede the applicant's plans to undertake the proposed air service. Moreover, the information in this exhibit is highly detailed and would not otherwise be made accessible to persons outside the company."]*

Therefore, this information should be afforded confidential treatment by the Department.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service and information for which confidential treatment is requested, which shall be attached to the motion in a sealed envelope with the name of the applicant, authority requested, docket number, and the notation: "Confidential Materials - Rule 12 Treatment Requested."]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing motion for confidential treatment by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See 14 CFR section 302.203(b)—service list should include same persons as the certificate application.]*



**Sample Notice of Intent to Resume Service**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Notice of

[NAME OF CARRIER APPLICANT]

of its intent to resume [*interstate*]/[*foreign*] [*scheduled*]/  
[*charter*] air transportation following a cessation of operations  
pursuant to 14 CFR 204.7

DOCKET [*will be  
completed by DOT*]

NOTICE OF  
[NAME OF CARRIER APPLICANT]

Communications with respect to this document should be sent to:

[*Name, mailing address, telephone and  
fax numbers, and email address of  
persons to be contacted*]

[*Date of Notice*]

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Notice of

[NAME OF CARRIER APPLICANT]

of its intent to resume [interstate]/[foreign] [scheduled]/  
[charter] air transportation following a cessation of operations  
pursuant to 14 CFR 204.7

DOCKET [will be  
completed by DOT]

NOTICE OF  
[NAME OF CARRIER APPLICANT]

Pursuant to section 204.7 of the Department's regulations, [Name of Applicant] submits this notice of its intent to resume [interstate]/[foreign] [scheduled]/[charter] air transportation under section 41102 of Title 49 of the United States Code ("the Statute"), following a cessation of operations.

*[Describe the authority held by the applicant, the circumstances surrounding the cessation of operations, and the proposed recommencement of operations.]*

Information in support of the carrier's fitness to resume the proposed air transportation operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[Describe any changes in the carrier's ownership and management since its latest fitness review, and list all current owners and managers and their positions. Describe the proposed markets to be served, aircraft to be used, and any changes in operations being made since the cessation. Provide current financial statements, a one-year forecast, and updated compliance information.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is

found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing notice of intent to resume certificated operations pursuant to 14 CFR 204.7 by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See 14 CFR Section 302.203(b) for service list requirements]*

**Sample Waiver of the 45-day Advance Filing Requirements of 14 CFR 204.7**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[*NAME OF CARRIER APPLICANT*]

for a waiver of the 45-day advance filing requirements of 14 CFR 204.7 and notice of intent to resume [*interstate*]/[*foreign*] [*scheduled*]/[*charter*] air transportation following a cessation of operations

DOCKET [*will be completed by DOT*]

APPLICATION OF  
[*NAME OF CARRIER APPLICANT*]

Communications with respect to this document should be sent to:

[*Name, mailing address, telephone and fax numbers, and email address of persons to be contacted*]

[*Date of Application*]

Notice: Any person who wishes to support or oppose this application must file an answer by [*15 days after receipt of the application by the Department of Transportation*] and serve that answer on all persons served with this filing.

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF CARRIER APPLICANT]

for a waiver of the 45-day advance filing requirements of 14 CFR 204.7 and notice of intent to resume [interstate]/[foreign] [scheduled]/[charter] air transportation following a cessation of operations

DOCKET [will be  
completed by DOT]

APPLICATION OF  
[NAME OF CARRIER APPLICANT]

[Name of Carrier Applicant] submits this application for a waiver of 14 CFR 204.7 so that it may resume [interstate]/[foreign] [scheduled]/[charter] air transportation operations within 45 days of the date of this filing.

In support of its application [Name of Applicant] states the following:

*[Describe the authority held by the applicant, the circumstances surrounding the cessation of operations, the proposed recommencement of operations, and why the Department should grant the waiver and allow the resumption of service on short notice.]*

Information in support of the carrier's fitness to resume the proposed air transportation operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[Describe any changes in the carrier's ownership and management since its latest fitness review, and list all current owners and managers and their positions. Describe the proposed markets to be served, aircraft to be used, and any changes in operations being made since the cessation. Provide current financial statements, a one-year forecast, and updated compliance information.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed

to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing 45-day waiver and notice of intent to resume certificated operations pursuant to 14 CFR 204.7 by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See 14 CFR Section 302.203(b) for service list requirements]*

**Sample Waiver of the Revocation-for-Dormancy Provisions of 14 CFR 204.7**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[*NAME OF CARRIER APPLICANT*]

for a waiver and extension of the revocation for dormancy provisions of 14 CFR 204.

DOCKET [*use Docket assigned to initial application*]

APPLICATION OF  
[*NAME OF CARRIER APPLICANT*]

Communications with respect to this document should be sent to:

[*Name, mailing address, telephone and fax numbers, and email address of persons to be contacted*]

[*Date of Application*]

Notice: Any person who wishes to support or oppose this application must file an answer by [*15 days after receipt of the application by the Department of Transportation*] and serve that answer on all persons served with this filing.

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Application of

[NAME OF CARRIER APPLICANT]

for a waiver and extension of the revocation for dormancy provisions of 14 CFR 204.7

DOCKET [use Docket assigned to initial application]

APPLICATION OF  
[NAME OF CARRIER APPLICANT]

[Name of Carrier Applicant] submits this application for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7 and for an extension of the one-year period in order to [commence][recommence] operations.

In support of its application [Name of Applicant] states the following:

*[Describe the authority held by the applicant, the circumstances surrounding the cessation of operations or the applicant's attempts to commence operations (whichever is applicable), why the waiver is needed, how much additional time the applicant needs before operations can start or resume, and why the Department should grant the waiver.]*

[If the applicant is also filing a notice of intent to commence or recommence commuter operations:] Information in support of the applicant's fitness to [commence]/[recommence] scheduled passenger operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[Describe any changes in the carrier's ownership and management since its latest fitness review, and list all current owners and managers and their positions. Describe the proposed markets to be served, aircraft to be used, and any changes in operations being made since the cessation. Provide current financial statements, a one-year forecast, and updated compliance information.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized



representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing waiver/extension of the revocation-for-dormancy provisions of 14 CFR 204.7 by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See 14 CFR Section 302.203(b) for service list requirements]*

**Sample Application for the Transfer of Air Carrier Certificate Authority**

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Joint Application of

[*NAME OF TRANSFEROR APPLICANT*]

and

[*NAME OF TRANSFEREE APPLICANT*]

for the transfer of a certificate of public convenience and necessity under 49 U.S.C. 41102 to engage in [*interstate*]/ [*foreign*] [*scheduled*]/[*charter*] air transportation

DOCKET [*will be completed by DOT*]

APPLICATION OF  
[*NAME OF APPLICANTS*]

Communications with respect to this document should be sent to:

[*Name, mailing address, telephone and fax numbers, and email address of persons to be contacted for each of the joint applicants.*]

[*Date of Application*]

Notice: Any person who wishes to support or oppose this application must file an answer by [*21 days after receipt of the application by the Department of Transportation*] and serve that answer on all persons served with this application.

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Joint Application of

[NAME OF TRANSFEROR APPLICANT]

and

[NAME OF TRANSFEREE APPLICANT]

for the transfer of a certificate of public convenience and necessity under 49 U.S.C. 41102 to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation

DOCKET [will be  
completed by DOT]

APPLICATION OF  
[NAME OF APPLICANTS]

[Names of Applicants] submit this application for the transfer to [Name of Transferee] of the certificate(s) of public convenience and necessity issued to [Name of Transferor] by Order(s) [CAB or DOT Order Number(s)] on [date] authorizing [Name of Transferor] to engage in [interstate]/[foreign] [scheduled]/[charter] air transportation pursuant to section 41102 of Title 49 of the United States Code (“the Statute”).

In support of its application [Names of Applicants] state the following:

*[Describe the circumstances of the proposed transfer and reasons why the Department should approve it as being in the public interest. Include a discussion of the effects of the transfer, if any, on (1) the viability of each carrier involved in the transfer, (2) competition in the domestic airline industry, and (3) the trade position of the United States in the international air transportation market.]*

Information in support of [Name of Transferee]’s fitness to conduct the proposed air transportation operations is contained in [Exhibits]/[Attachments] 1 through \_\_\_\_.

*[The following certification should be signed by a representative of the transferor and the transferee.]*

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of

the applicant, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Submitted by,

*[Signature and Title with Transferor]*

*[Signature and Title with Transferee]*

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing transfer application by first class mail, postage prepaid, upon the persons shown in the following service list.

*[Signature and title]*

*[Date of Service]*

#### SERVICE LIST

*[See 14 CFR Section 302.203(b) for service list requirements]*



### **PART III**

## **APPLICABLE DEPARTMENT OF TRANSPORTATION REGULATIONS**

**14 CFR Part 204 - Requirements for new air carrier applicants and air carrier continuing fitness.**

**Aviation Disaster Family Assistance Act**

**[Click here for other Applicable Airline Regulations](#)  
in 14 CFR Parts 200, 201, 203, 205, 215, 298, and 302**

**14 CFR Part 204**  
**DATA TO SUPPORT FITNESS DETERMINATIONS**

**Subpart A—General Provisions**

Sec.

204.1 Purpose.

204.2 Definitions.

**Subpart B—Filing Requirements**

204.3 Applicants for new certificate or commuter air carrier authority.

204.4 Carriers proposing to provide essential air service

204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.

204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

204.7 Revocation for dormancy.

**SUBPART A—GENERAL PROVISIONS**

**§ 204.1 Purpose.**

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible place, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority.

**§ 204.2 Definitions.**

As used in this part:

(a) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(b) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 41102 of the Statute or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute. Certificated carriers are those that hold certificate authority.

(c) *Citizen of the United States* means:

(1) An individual who is a citizen of the United States;

(2) A partnership each of whose partners is an individual who is a citizen of the United States; or

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(d) *Commuter air carrier* means an air carrier holding or seeking authority under part 298 of this Chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(e) *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.

(f) *Essential air service* is that air transportation which the Department has found to be essential under Sub-chapter II of Chapter 417 of the Statute.

(g) *Fit* means fit, willing, and able to perform the air transportation in question properly and to conform to the provisions of the Statute and the rules, regulations and requirements issued under the Statute.

(h) *Interstate air transportation* means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

(i) *Key personnel* include the directors, president, chief executive officer, chief operating officer, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(j) *Normalized operations* are those which are relatively free of start-up costs and temporary barriers to full-scale operations posed by the carrier's limited experience.

(k) *Relevant corporations* are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (i.e., any air carrier in which any directors,

principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier as indicated, for example, by 25 percent representation on the board of directors, participation in policy-making processes, substantial intercompany transactions, or managerial personnel with common responsibilities in both companies.

(l) *Substantial change in operations, ownership, or management* includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) The filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(m) *Substantial interest* means beneficial control of 10 percent or more of the outstanding voting stock.

## SUBPART B—FILING REQUIREMENTS

### § 204.3 Applicants for new certificate or commuter air carrier authority.

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in paragraphs (a) through (v) of this section. In addition, the Department may require an applicant to provide additional data if necessary to reach an informed judgment about its fitness. If the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Air Carrier Fitness Division to ascertain what data required by this section are already available to the Department and need not be included in the filing.

*NOTE:* If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with § 241.22(g).

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated, certifying that the applicant/corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:

(1) Their names and addresses;

(2) The experience, expertise, and responsibilities of each;

(3) The number of shares of the applicant's voting stock held by each and the percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 10 percent or

more of total voting stock outstanding), and other interests each holds or has held in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant. Such list shall include:

(1) Each person's name, address and citizenship;

(2) The number of shares of the applicant's voting stock held by each such person and the corresponding percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been

(i) An air carrier, a foreign air carrier, a common carrier, or

(ii) Substantially engaged in the business of aeronautics, or

(iii) An officer or director of any such entity, or

(iv) A holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and relationship to the applicant.

(i) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:

(1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and



(2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation

(3) All footnotes applicable to the financial statements, including:

(i) A statement as to whether the documents were prepared in accordance with Generally Accepted Accounting Principles, and

(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;

(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant.

(l) A list of all actions and outstanding judgments for more than \$5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.

(m) The number of actions and outstanding judgments of less than \$5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each on such judgments.

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Statute or orders, rules, regulations, or requirements issued pursuant to the Statute, and any corrective actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)

(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:

(1) The date of the occurrence;

(2) The type of flight;

(3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;

(4) A description of any damage to the aircraft;

(5) The FAA and NTSB file numbers and the status of the investigations, including any

enforcement actions initiated against the carrier or any of its personnel; and

(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identify of the local FAA office and personnel responsible for processing an application for any additional FAA authority needed to conduct the proposed operations.

(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an itemization of all pre-operating and start-up costs associated with the initiation of the proposed service. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

#### **§ 204.4 Carriers Proposing To Provide Essential Air Service.**

Applicants proposing to provide essential air service have been divided into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier's fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Air Carrier Fitness Division to ascertain what information is already available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

(1) All of the information required under § 204.3 of this part.

(2) A description of the back-up aircraft available to the applicant, including:

(i) The number of each type of such aircraft;

- (ii) The conditions under which such aircraft will be available to the carrier;
  - (iii) The carrier's plans for financing the acquisition or lease of such additional aircraft, and
  - (iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.
- (3) A description of the fuel available to perform the proposed essential air services and the carrier's contracts with fuel suppliers.
- (4) The carrier's systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).
- (5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.
- (6) A description of the average number of block hours each type of aircraft is currently flown per day.
- (7) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.
- (8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.
- (9) A pro-forma income statement for the proposed operation for the first annual period.
- (b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:
- (1) All of the information required under § 204.3 of this part.
  - (2) All of the information required under paragraph (a) of this section.
  - (3) A forecast Income Statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:
    - (i) Subsidy needed;
    - (ii) Estimated block hours and revenue miles by type of aircraft;
    - (iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;

(iv) An explanation of the derivation of estimates of operating expenses; and

(v) A description of the manner in which costs and revenues are allocated.

(4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

**§ 204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.**

(a) A certificated or commuter air carrier proposing a substantial change in operations, ownership or management shall file the data set forth in § 204.3. These data must be submitted in cases where:

(1) The proposed change requires new or amended authority, or

(2) The change substantially alters the factors upon which its latest fitness finding is based, even if no new authority is required.

(b) Information which a carrier has previously formally filed with the Department, or with another Federal agency where they are available to the Department, which continues to reflect the current state of the carrier's fitness may be omitted. The carrier instead should identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the carrier may contact the Department (Air Carrier Fitness Division) to ascertain what data required by this section, if any, are already available to the Department or are not applicable to the substantial change in question and need not be included in the filing.

(c) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to Docket Operations, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E. Washington, DC 20590, or by electronic submission at <http://www.regulations.gov>.

(d) Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, management, or ownership, including changes that

may affect the air carrier's citizenship, shall be addressed to the Chief, Air Carrier Fitness Division, Office of Aviation Analysis, Department of Transportation, 1200 New Jersey Avenue, S.E. Washington DC, 20590.

**§ 204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.**

Carriers proposing to make a change which would not substantially affect their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier's fitness into question, the Department may require the applicant carrier to file additional information.

**§ 204.7 Revocation for dormancy.**

(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations

without first filing all of the data required by § 204.3 at least 45 days before it intends to provide any such air transportation. Such filings shall be addressed to the Documentary Services Division, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in fitness data previously formally filed with the Department, the carrier shall file a sworn statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refiled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a data submission under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date or that decision or finding shall be the date considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

**AVIATION DISASTER FAMILY ASSISTANCE ACT OF 1996**  
**[Excerpt from Federal Aviation Reauthorization Act of 1996**  
**(P.L. 104-265), October 6, 1996]**

**TITLE VII--FAMILY ASSISTANCE**

**SEC. 701. SHORT TITLE.**

This title may be cited as the "Aviation Disaster Family Assistance Act of 1996."

**SEC. 702. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.**

*(a) AUTHORITY TO PROVIDE ASSISTANCE-*

*(1) IN GENERAL- Subchapter III of chapter 11 is amended by adding at the end the following:*

Sec. 1136. Assistance to families of passengers involved in aircraft accidents

(a) IN GENERAL- As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall--

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) RESPONSIBILITIES OF THE BOARD- The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION- The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services

designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5) To arrange a suitable memorial service, in consultation with the families.

(d) PASSENGER LISTS-

(1) REQUESTS FOR PASSENGER LISTS-

(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES- It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) REQUESTS BY DESIGNATED ORGANIZATION- The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) USE OF INFORMATION- The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) CONTINUING RESPONSIBILITIES OF THE BOARD- In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident--

(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) USE OF AIR CARRIER RESOURCES- To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

(g) PROHIBITED ACTIONS-

(1) ACTIONS TO IMPEDE THE BOARD- No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the

ability of the families of passengers involved in the accident to have contact with one another.

(2) **UNSOLICITED COMMUNICATIONS-** In the event of an accident involving an air carrier providing interstate or foreign air transportation, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident.

(h) **DEFINITIONS-** In this section, the following definitions apply:

(1) **AIRCRAFT ACCIDENT-** The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.

(2) **PASSENGER-** The term "passenger" includes an employee of an air carrier aboard an aircraft.

(2) **CONFORMING AMENDMENT-** The table of sections for such chapter is amended by inserting after the item relating to section 1135 the following:

"1136. Assistance to families of passengers involved in aircraft accidents."

(b) **PENALTIES-** Section 1155(a)(1) of such title is amended--  
(1) by striking "or 1134(b) or (f)(1)" and inserting "section 1134(b), section 1134(f)(1), or section 1136(g)"; and  
(2) by striking "either of" and inserting "any of".

### **SEC. 703. AIR CARRIER PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.**

(a) **IN GENERAL-** Chapter 411 is amended by adding at the end the following:

Sec. 41113. Plans to address needs of families of passengers involved in aircraft accidents.

(a) **SUBMISSION OF PLANS-** Not later than 6 months after the date of the enactment of this section, each air carrier holding a certificate of public convenience and necessity under section 41102 of this title shall submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life.

(b) **CONTENTS OF PLANS-** A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:

(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.

(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the

air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

(4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the air carrier.

(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

(7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months.

(8) An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.

(9) An assurance that the treatment of the families of nonrevenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.

(10) An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

(11) An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.

(12) An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) An assurance that the air carrier will commit sufficient resources to carry out the plan.

(c) **CERTIFICATE REQUIREMENT-** After the date that is 6 months after the date of the enactment of this section, the Secretary may not approve an application for a certificate of public convenience and necessity under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).

(d) **LIMITATION ON LIABILITY-** An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.

(e) AIRCRAFT ACCIDENT AND PASSENGER DEFINED- In this section, the terms “aircraft accident” and “passenger” have the meanings such terms have in section 1136 of this title.

(b) CONFORMING AMENDMENT- The table of sections for such chapter is amended by adding at the end the following:

“41113. Plans to address needs of families of passengers involved in aircraft accidents.”

#### **SEC. 704. ESTABLISHMENT OF TASK FORCE.**

(a) ESTABLISHMENT- The Secretary of Transportation, in cooperation with the National Transportation Safety Board, the Federal Emergency Management Agency, the American Red Cross, air carriers, and families which have been involved in aircraft accidents shall establish a task force consisting of representatives of such entities and families, representatives of air carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) GUIDELINES AND RECOMMENDATIONS- The task force established pursuant to subsection (a) shall develop--

(1) guidelines to assist air carriers in responding to aircraft accidents;

(2) recommendations on methods to ensure that attorneys and representatives of media organizations do not intrude on the privacy of families of passengers involved in an aircraft accident;

(3) recommendations on methods to ensure that the families of passengers involved in an aircraft accident who are not citizens of the United States receive appropriate assistance;

(4) recommendations on methods to ensure that State mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aircraft accident or other related sites;

(5) recommendations on the extent to which military experts and facilities can be used to aid in the identification of the remains of passengers involved in an aircraft accident; and

(6) recommendations on methods to improve the timeliness of the notification provided by air carriers to the families of passengers involved in an aircraft accident, including--

(A) an analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

(B) an analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A);

(C) an analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and

(D) an analysis of the implications for personal privacy that would result if air carriers were required to take the steps described in subparagraph (A).

(c) REPORT- Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b).

#### **SEC. 705. LIMITATION ON STATUTORY CONSTRUCTION.**

Nothing in this title or any amendment made by this title may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.



**PART IV**

**SAMPLE FORMS**



**AFFIDAVIT OF CITIZENSHIP**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ *[name]* being first duly sworn, deposes and says:

1. That he/she is duly elected, qualified, and serving as \_\_\_\_\_ *[officer]* of \_\_\_\_\_ *[applicant's name]* and that he/she is authorized to and does make this affidavit for it.

2. That \_\_\_\_\_ *[applicant's name]* is a citizen of the United States within the meaning of 49 U.S.C. 40102(a)(15).

\_\_\_\_\_ *[signature]* \_\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_ *[signature of Notary Public]* \_\_\_\_\_.

(SEAL)

**AFFIDAVIT OF SAFETY COMPLIANCE**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ *[name]* being first duly sworn, deposes and says:

1. That he/she is duly elected, qualified, and serving as \_\_\_\_\_ *[officer]* of \_\_\_\_\_ *[applicant's name]* and that he/she is authorized to and does make this affidavit for it.

2. That all aircraft owned and leased by \_\_\_\_\_ *[applicant's name]* have been certified by the Federal Aviation Administration and currently comply with all applicable Federal Aviation Administration safety standards under Parts [121] [135], as well as the noise standards of Part 36, of the Federal Aviation Regulations.

\_\_\_\_\_ *[signature]* \_\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_ *[signature of Notary Public]* \_\_\_\_\_.

(SEAL)

## INSTRUCTIONS FOR COMPLETING CERTIFICATE OF INSURANCE -- OST FORM 6410

OST Form 6410 is to be completed by an officer or authorized representative of an insurance company or broker and an original, signed copy is to be filed with:

Federal Aviation Administration  
AFS-260, Room 831  
800 Independence Avenue, SW  
Washington, DC 20591  
(202) 267-7773 or 267-7897

[Click for Downloadable and fillable OST Insurance forms 6410 and 6411](#)

### Directions:

**Line 1.** Enter name and address of the insurance company.

**Lines 2-3.** Enter name (including “doing business as” (“d/b/a”) names and address of air carrier insured by the policy. If an insurance policy is issued to a person or company other than the air carrier, the certificate of insurance must state that the air carrier is also covered under that policy. Include the FAA Air Carrier Certificate number (if known).

**Line 4.** Enter the effective date of the policy. Note that the policy must remain in effect and cannot be cancelled on less than ten days’ written notice to the Department.

**Section 1.** State whether the insurance company is licensed to issue aircraft insurance policies in the United States or by a foreign government or is an approved surplus line insurer. Note that more than one block may be checked.

**Section 2, Part A. *U.S. Air Taxi Operators with Part 298 Authority Only.*** This part should be completed only for **Air Taxi Operators** with authority under Part 298 to operate aircraft having 60 seats or less or a payload capacity of 18,000 pounds or less, not in scheduled passenger service. Indicate whether the insured air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number and amount of coverage in the specified places. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

**Section 2, Part B. *U.S. Commuter and Certificated Air Carriers Operating Small Aircraft.*** This part should be completed only for commuter or certificated air carriers operating aircraft that have 60 seats or less or a payload capacity of 18,000 pounds or less. Indicate whether the insured air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number and amount of coverage in the specified places. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

**Section 2, Part C. *U.S. Certificated Air Carriers Operating Large Aircraft.*** This part should be completed only for certificated air carriers operating aircraft that have more than 60 seats or a payload capacity of more than 18,000 pounds. Indicate whether the insured air carrier has separate coverages or combined coverage by marking the appropriate block and placing the policy number and amount of coverage in the specified places. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

**Section 3.** Indicate whether the policy covers (1) all aircraft operated by the insured air carrier, or (2) general groups or types of aircraft, or (3) specific aircraft as shown by FAA registration number (use an additional page if necessary).

**Section 4.** Indicate name, address, contact person, and telephone numbers (office/fax) of insurer and, if applicable, of the broker. This form must be signed by an officer or authorized representative of the insurance company or broker.

**Any questions concerning the completion of this form?** Please contact the FAA Technical Programs Branch at 202-267-8166 or 202-267-7773.

**Form 4523**  
**INTERIM AGREEMENT OF AIR CARRIERS**  
**(“MONTREAL AGREEMENT”)**

**EXPLANATORY STATEMENT**

In 1934, the United States became a party to an international agreement, generally known as the Warsaw Convention, which was the first agreement between countries to provide for any uniform body of law with respect to the rights and responsibilities of passengers and air carriers in international transportation. Among other things, the Warsaw Convention set a limit on the liability an air carrier could incur with respect to bodily injury or death of any passenger carried in international air transportation,<sup>1</sup> which, in today's terms, is approximately \$10,000.

In 1966, the United States indicated its intent to denounce the Warsaw Convention because of its dissatisfaction with the Convention's \$10,000 limit on an air carrier's liability to passengers. The U.S. withdrew its denunciation when all carriers serving this country, both U.S. and foreign, entered into the “Montreal Agreement.” That Agreement increases the Warsaw Convention liability limit to \$75,000 per passenger.<sup>2</sup> The Agreement also provides that a carrier is strictly liable for a passenger's bodily injury or death up to the liability limit even if the carrier can prove that it was not negligent in causing the accident.

The Department requires all air carriers to become signatories to the Montreal Agreement to ensure that passengers are covered by the higher limits of liability provided by that Agreement. This is accomplished by completing and filing OST Form 4523 in a docket specifically set up for this purpose, Docket DOT-OST-1995-236.

**INSTRUCTIONS FOR COMPLETING OST FORM 4523**

1. The form must be signed by an officer of the carrier.
2. The signing person's title and the name and address of the air carrier should be listed in the space provided.
3. OST Form 4523 should be sent to Department of Transportation Dockets, 1200 New Jersey Avenue, SE, Washington, DC 20590, or uploaded to Docket DOT-OST-1995-236 via [www.regulations.gov](http://www.regulations.gov).

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<sup>1</sup> International air transportation not only includes transportation between a U.S. point and a foreign point, but also service wholly within the U.S. if the passenger holds a ticket providing an interline connection to a foreign point.

<sup>2</sup> This limit on liability should not be confused with the Department's mandatory liability insurance requirements for air carriers, which are required for all operations, both domestic and international, and which are intended to provide a source of funds in the event of an aircraft accident.



AGREEMENT

The undersigned carriers (hereinafter referred to as "the Carriers") hereby agree as follows:

1. Each of the Carriers shall, effective May 16, 1986, include the following in its conditions of carriage, including tariffs embodying conditions of carriage filed by it with any government:

"The Carrier shall avail itself of the limitation of liability provided in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw October 12th, 1929, or provided in the said Convention as amended by the Protocol signed at The Hague September 28th, 1955. However, in accordance with Article 22(1) of said Convention, or said Convention as amended by said Protocol, the Carrier agrees that, as to all international transportation by the Carrier as defined in the said Convention or said Convention as amended by said Protocol, which, according to the contract of Carriage, includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place

- (1) The limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of US \$75,000 inclusive of legal fees and costs, except that, in case of a claim brought in a State where provision is made for separate award of legal fees and costs, the limit shall be the sum of US \$58,000 exclusive of legal fees and costs.
- (2) The Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20(1) of said Convention or said Convention as amended by said Protocol.

Nothing herein shall be deemed to affect the rights and liabilities of the Carrier with regard to any claim brought by, on behalf of, or in respect of any person who has willfully caused damage which resulted in death, wounding, or other bodily injury of a passenger."

2. Each Carrier shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention, or the Convention as amended by the Hague Protocol, and by the special contract described in paragraph 1, the following notice, which shall be printed in type at least as large as 10 point modern type and in ink contrasting with the stock on (i) each ticket; (ii) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (iii) on the ticket envelope:

"ADVICE TO INTERNATIONAL PASSENGER ON LIMITATION OF LIABILITY

Passengers on a journey involving an ultimate destination or a stop in a country other than the country of origin are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to the entire journey, including any portion entirely within the country of origin or destination. For such passengers on a journey to, from, or with an agreed stopping place in the United States of America, the Convention and special contracts of carriage embodied in applicable tariffs provide that the liability of

[certain carriers parties to such special contracts for death of or personal injury to passengers is limited in most cases to proven damages not to exceed US \$75,000 per passenger, and that this liability up to such limit shall not depend on negligence on the part of the carrier. For such passengers traveling by a carrier not a party to such special contracts or on a journey not to, from, or having an agreed stopping place in the United States of America, liability of the carrier for death or personal injury to passengers is limited in most cases to approximately US \$10,000 or US \$20,000.

The names of Carriers parties to such special contracts are available at all ticket offices of such carriers and may be examined on request.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention or such special contracts of carriage. For further information please consult your airline or insurance company representative."

3. [This Agreement was filed with the Civil Aeronautics Board of the United States. The Board approved it by Order E-23680, adopted May 13, 1986. The Agreement (Agreement 18900) became effective May 16, 1986. On January 1, 1985, this Agreement became the responsibility of the Department of Transportation (DOT) by operation of law.]

4. This Agreement may be signed in any number of counterparts, all of which shall constitute one Agreement. Any Carrier may become a party to this Agreement by signing a counterpart hereof and depositing it with DOT.

5. Any Carrier party hereto may withdraw from this Agreement by giving twelve (12) months' written notice of withdrawal to DOT and the other Carriers parties to the Agreement.

\_\_\_\_\_  
 \*Either alternative may be used. (Signature and Date)

\_\_\_\_\_  
 (Printed Name and Title)

\_\_\_\_\_  
 (Name and Address of Carrier)