

§ 302.11

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shall include Department staff designated to participate in the proceeding and any persons authorized to intervene or granted permission to participate in accordance with §§ 302.19 and 302.20. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these governments or their designated authorities shall be a party.

(b) Upon motion and for good cause shown, the Department may order a substitution of parties, except that in case of the death of a party, substitution may be ordered without the filing of a motion.

(c) An association composed entirely or in part of air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply if the association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department. Upon motion of any interested person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the grounds of significant divergence of interest or position within the association.

§ 302.11 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. If an administrative law judge is assigned to a proceeding and before the issuance of a recommended or initial decision or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times, motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein. This paragraph should not be construed as authorizing motions in the nature of petitions for reconsideration.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state their grounds and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers to them, and rulings on them, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except where incorporation of a motion in another document is specifically authorized by the Department, or where a document is filed that requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately titled and identified to indicate that it incorporates a motion; otherwise, the motion will be disregarded.

(c) *Answers to motions.* Within seven (7) days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Requests for expedition.* Any interested person may by motion request expedition of any proceeding or file an answer in support of or in opposition to such motions.

(f) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time to take action fixed by this part or by any order of the Department or of an administrative law judge (or any extension granted thereunder).

(g) *Disposition of motions.* The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision. The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if the administrative law judge finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, the administrative law judge may refer such motion to the DOT decisionmaker for decision.

(h) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on a motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding or at any other appropriate time irrespective of the filing of an appeal or any action taken on it.

§302.12 Objections to public disclosure of information.

(a) *Generally.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR 7.1 *et seq.*)

(b) *Information contained in written documents.* Any person who objects to the public disclosure of any information filed in any proceeding, or pursuant to the provisions of the Statute, or any Department rule, regulation, or order, shall segregate, or request the segregation of, such information into a separate submission and shall file it

separately in a sealed envelope, bearing the caption of the enclosed submission, and the notation "Confidential Treatment Requested Under §302.12." At the time of filing such submission (or, when the objection is made by a person who is not the filer, within five (5) days after the filing of such submission), the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (d) or (f) of this section, as appropriate. Notwithstanding any other provision of this section, copies of the filed submission and of the motion need not be served upon any other party unless so ordered by the Department.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and representative of each party as the administrative law judge or the person before whom the deposition is being taken shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation "Confidential Treatment Requested Under §302.12 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion in accordance with the procedure outlined in paragraph (d) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the Department.