

## § 302.34

## 14 CFR Ch. II (1-1-08 Edition)

B. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.18.

### § 302.34 Exceptions to tentative decisions of the DOT decisionmaker.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto; *Provided, however,* That exceptions shall specify any matters of law, fact, or policy that were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion that is not expressly made the subject of an exception in compliance with the provisions of this section; *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

### § 302.35 Briefs to the DOT decisionmaker.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his or her exceptions to such decision or in

opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.32(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within thirty (30) days after date of service of the order granting discretionary review unless otherwise specified in the order. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs—(1) Contents.* Each brief shall discuss every point of law, fact, or precedent that the party submitting it is entitled to raise and that it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed five (5) pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations, or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved. Copies of