

§ 302.419 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding, in which an order of the Department has been issued pursuant to section 46101 of the Statute or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 46106 of the Statute, believes that changed conditions of fact or law or the public interest require that said order or judicial action be modified or set aside, in whole or in part, such party may file with the Department a motion requesting that the Department take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. The Department shall dispose of the motion by such procedure as it deems appropriate.

§ 302.420 Saving clause.

Repeal, revision or amendment of any of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

§ 302.501 Applicability.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation under Chapter 415 of the Statute. Except as modified

by this subpart, the provisions of subpart A apply.

§ 302.502 Institution of proceedings.

A proceeding to determine the lawfulness of rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by the Department.

§ 302.503 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the air carrier against whose tariff provision the petition or complaint is filed.

(c) Answers to complaints, other than those filed under § 302.506, shall be filed within seven (7) working days after the complaint is filed.

§ 302.504 Dismissal of petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts that warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.505 Order of investigation.

The Department, on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the foreign air transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and may assign the proceeding for hearing before an administrative law judge. If a hearing is held, except

§ 302.506

as modified by this subpart, the provisions of §302.17 through §302.38 of this part shall apply.

§ 302.506 Complaints requesting suspension of tariffs; answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 41509 of the Statute shall fully identify the tariff and include reference to:

- (1) The issued or posting date,
- (2) The effective date,
- (3) The name of the publishing carrier or agent,

(4) The Department number, and

(5) Specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 41509 of the Statute, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by the complainant, and within the time limits herein provided, a complaint may be sent by facsimile, telegram, or electronic mail (when available) to the Department and to the carrier against whose tariff provision the complaint is made. Such complaint shall state the grounds relied upon, and must be confirmed in writing within three (3) business days and filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§ 302.507 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to §302.506, with respect to tariffs that do not con-

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tain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Department, in which event the period for filing shall be extended to the next successive day that is not a Saturday, Sunday, or holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by §302.8.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

§ 302.601 Applicability.

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers (“carriers”), pursuant to 49 U.S.C. 47129(a), for a determination of the reasonableness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination. An airport owner or operator is considered to have imposed a fee on a carrier when it has taken all steps necessary under its procedures to establish the fee, whether or not the fee is being collected or carriers are currently required to pay it.

(b) This subpart does not apply to—

(1) A fee imposed pursuant to a written agreement with a carrier using the facilities of an airport;

(2) A fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994, or

(3) Any other existing fee not in dispute as of August 23, 1994.

(c) Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.602 Complaint by a carrier; request for determination by an airport owner or operator.

(a) Any carrier may file a complaint with the Secretary for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport. Any airport