

§ 300.3

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an order instituting a formal proceeding. Motions for such waivers and any answers shall be filed in the applicable docket in accordance with § 302.11 of the Department's Procedural Regulations (14 CFR 302.11) and served upon all parties to the proceeding.

(d) *Status and expedition requests.* Paragraph (a) of this section shall not apply to oral or written communications asking about the status, or requesting expeditious treatment, of a public proceeding. However, any request for expeditious treatment should be made in accordance with the Rules of Practice, particularly Rule 11, § 302.11 of this chapter.

(e) *National defense and foreign policy.* In nonhearing cases, paragraph (a) of this section shall not apply to communications concerning national defense or foreign policy matters, including international aviation matters. In hearing cases, any communications on those subjects that would be barred by paragraph (a) of this section are permitted if the communicator's position with respect thereto cannot otherwise be fairly presented, but such communications shall not be included as part of the record on which decisions must be made.

(f) *Communications not considered.* A communication in violation of this section shall not be considered part of a record, or included as available material, for decision in any proceeding.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended by Amdt. No. 300-7, 52 FR 18904, May 20, 1987; 60 FR 10312, Feb. 24, 1995; 60 FR 43528, Aug. 22, 1995; 60 FR 43528, Aug. 22, 1995; 65 FR 6456, Feb. 9, 2000]

§ 300.3 Reporting of communications.

(a) *General.* The following types of substantive communication shall be reported as specified in paragraph (b) of this section:

(1) Any communication in violation of § 300.2(a) of this chapter.

(2) Information given upon determination of an emergency under § 300.2(c)(5) of this chapter.

(3) Information given at the request of a DOT employee in a tariff matter under § 300.2(c)(6) of this chapter.

(4) Communications in nonhearing cases to be decided within 30 days under § 300.2(c)(7) of this chapter.

(5) Communications in nonhearing cases arising under 49 U.S.C. 41731-42, made under § 300.2(c)(8).

(b) *Public filing.* (1) A written communication shall be placed onto the electronic docket management system (DMS) in the file of the docket number corresponding to the proceeding, which shall be available for inspection and copying during business hours in Office of Docket Operations and Media Management.

(2) An oral communication shall be summarized by the DOT employee receiving it. One copy shall be put into a public file as described in paragraph (b) (1) of this section, and another copy shall be mailed to the communicator.

(3) Electronic copies of written communications and oral summaries shall be posted to the DOT's electronic docket. Such docketed materials may be searched, viewed, and downloaded through the Internet at <http://dms.dot.gov>.

(4) Copies of all filings under this part dealing with discontinuances or reductions of air transportation shall be mailed to the directly affected local communities, State agencies, and airport managers.

(c) *Status and expedition requests.* A DOT decisionmaker who receives a communication asking about the status or requesting expeditious treatment of a public proceeding, other than a communication concerning national defense or foreign policy (including international aviation), shall either:

(1) Refer the communicator to Office of Docket Operations and Media Management.

(2) If the DOT decisionmaker responds by advising on the status, put a memorandum describing the exchange in the public file as described in paragraph (b)(1) of this section.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995; Doc. No. OST-2002-12200, 67 FR 30325, May 6, 2002]

§ 300.4 Separation of functions in hearing cases.

(a) This section applies after the initiation of a hearing or enforcement case by the Department.

(b) A DOT employee who is participating in a hearing case on behalf of an

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office that is a party, another DOT employee who is in fact reviewing the position taken, or who has participated in developing the position taken in that case, or, in cases involving accusatory or disciplinary issues (including all enforcement cases) such employees' supervisors within that office, shall have no substantive communication with any DOT decisionmaker, administrative law judge in the case, or other DOT employee advising them, with respect to that or any factually related hearing case, except in accordance with a published DOT rule or order. In addition, each bureau or office supervisor of a DOT employee who is participating in a hearing case on behalf of that office when it is a party shall have no substantive communication with any administrative law judge in the case, or DOT employee advising the judge, in that or any factually related hearing case, except in accordance with a published DOT rule or order. For each hearing case, bureau or office heads shall maintain a publicly available record of those employees who are participating or are in fact reviewing the position taken, or who have participated in developing the position taken in that case.

(c) In hearing cases involving fares or rates, or applications for a certificate or permit under 49 U.S.C. 41102 and 41302, or applications by a holder for a change in a certificate or permit, a supervisor who would not be permitted to advise the DOT decisionmaker under paragraph (a) may advise the DOT decisionmaker in the following manner: The supervisor's advice must either be made orally in an open DOT meeting or by a memorandum placed in the docket or other public file of such matter. Oral advice must be summarized in writing by the supervisor and placed in the docket or file of the matter. A copy of such written memorandum or summary of oral advice must be served on each party to the proceeding within 3 business days after such advice is given to the concerned DOT decisionmaker. Each of the parties may comment in writing on such advice within 5 business days after service or the summary. In no event, however, may a supervisor advise the DOT decisionmaker

if he or she acted as the office's counsel or witness in the matter.

(d) In enforcement cases, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, under the supervision of the Deputy General Counsel, will conduct all enforcement proceedings and related investigative functions, while the General Counsel will advise the DOT decisionmaker in the course of the decisional process. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will report to the Deputy General Counsel. To ensure the independence of these functions, this Office and the Deputy General Counsel, for the purpose of this section, shall be considered an "office" as that term is used in paragraph (a), separate from the General Counsel and the rest of the Office of the General Counsel.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.5 Prohibited conduct.

No person shall: (a) Attempt to influence the judgment of a concerned DOT employee by any unlawful means such as deception or the payment of money or other consideration; or

(b) Disrupt or interfere with the fair and orderly disposition of a DOT proceeding.

§ 300.6 Practitioners' standards of conduct.

Every person representing a client in matters before DOT in all contacts with DOT employees, should:

(a) Strictly observe the standards of professional conduct;

(b) Refrain from statements or other actions designed to mislead DOT or to cause unwarranted delay;

(c) Avoid offensive or intemperate behavior;

(d) Advise all clients to avoid improprieties and to obey the law as the attorney believes it to be; and

(e) Terminate the professional relationship with any client who persists in improprieties in proceedings before DOT.

§ 300.7 Conciseness.

Every oral or written statement made in a DOT proceeding shall be as