(d) *Date of service.* The date of service is the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark. The date shown in the FDMS index is not necessarily the date of service. It is the date the FDMS received the document.

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a specified date after service by mail, 5 days is added to the prescribed period.

(f) *Service by the administrative law judge.* The administrative law judge must serve a copy of each document including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) *Service made.* A document is deemed served in accordance with this subpart if it was properly addressed; was sent in accordance with this subpart; and was returned, not claimed, or refused. Service is considered valid as of the date and the time that the document was mailed, or personal delivery of the document was refused.

(h) *Presumption of service.* There is a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

[Docket No. FAA–2001–8607, 66 FR 2180, Jan. 10, 2001, as amended at 72 FR 68476, Dec. 5, 2007]

§ 406.117 Confidential information.

(a) *Filing confidential information.* If a party wants certain information that the party is filing not made available to the public, the party must do the following:

(1) Place the information in a separate sealed envelope and clearly mark the envelope "CONFIDENTIAL." At least the first page of the document in the envelope also must be marked "CONFIDENTIAL."

(2) Attach to this envelope a cover document marked "Confidential information filed with administrative law judge" or "Confidential information filed with Assistant Chief Counsel for Litigation." The cover document must include, at the least, a short statement of what is being filed, such as "Respondent's motion for confidentiality order."

(3) Unless such a motion has already been granted, enclose a motion for confidentiality order in accordance with paragraph (c) of this section. The motion must be in the sealed envelope if it contains confidential information; otherwise the motion must be outside of the sealed envelope.

(b) *Marked information not made public.* If a party files a document in a sealed envelope clearly marked "CONFIDENTIAL" the document may not be made available to the public unless and until the administrative law judge or the FAA decisionmaker decides it may be made available to the public in accordance with 49 U.S.C. 70114.

(c) *Motion for confidentiality order.* If a party is filing, is requested to provide in discovery, or intends to offer at the hearing, information that the party does not wish to be available to the public, the party must file a motion for a confidentiality order.

(1) The party must state the specific grounds for withholding the information from the public.

(2) If the party claims that the information is protected under 49 U.S.C. 70114, and if both the complainant and the respondent agree that the information is protected under that section, the administrative law judge must grant the motion. If one party does not agree that the information is protected under 49 U.S.C. 70114 the administrative law judge must decide. Either party may file an interlocutory appeal of right under § 406.173(c).

(3) If the party claims that the information should be protected on grounds other than those provided by 49 U.S.C. 70114 the administrative law judge must grant the motion if, based on the

motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

(4) If the administrative law judge determines that the information is not necessary to decide the case or would not otherwise lead to the discovery of relevant material, the administrative law judge must preclude any inquiry into the matter by any party.

(5) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(6) If the administrative law judge determines that the requested material is necessary to decide the case, or would otherwise lead to the discovery of relevant material, and that a confidentiality order is warranted, the administrative law judge must—

(i) Provide an opportunity for review of the document by the attorneys of record off the record.

(ii) Provide procedures for excluding the information from the record, or order that portion of the record that includes confidential information be closed.

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(7) If an administrative law judge orders a record closed, in whole or in part:

(i) The closed record is not available to the public.

(ii) The closed record is available to the parties' attorneys of record.

(iii) The administrative law judge may determine whether the closed record is available to the parties, the parties' representatives, or other persons such as witnesses for a party.

(iv) No party, attorney of record, representative of record, or person who receives information from such persons, may disclose information that has been protected under this section except to

a person authorized by this section or the administrative law judge to receive it.

(v) If a person other than one authorized by this section desires to view or copy a closed record, the person must file a motion to open the record.

§ 406.119 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge or the FAA decisionmaker, or by any applicable statute.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or a legal holiday. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§ 406.121 Extension of time.

Before an appeal is filed with the FAA decisionmaker, the parties may seek an extension of time as follows:

(a) *Extension of time by agreement of the parties.* The parties may agree to extend for a reasonable period of time for filing a document under this subpart with the agreement of the administrative law judge. The party seeking the extension of time must submit a draft order to the administrative law judge for signature, file it with the Federal Docket Management System, and serve it on each party.

(b) *Motion for extension of time.* If the parties do not agree to an extension of time for filing a document, a party desiring an extension may file with the Federal Docket Management System and serve a written motion for an extension of time not later than 7 days before the document is due unless good cause for the late filing is shown. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) *Failure to rule.* If the administrative law judge fails to rule on a written motion for an extension of time by the

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