

(5) If a citizen applying for a certificate does not meet the procedural schedule adopted by the Secretary in a proceeding, the Secretary may extend the period for acting under paragraphs (3) and (4) of this subsection by a period equal to the period of delay caused by the citizen. In addition to an extension under this paragraph, an initial or recommended decision under paragraph (3) of this subsection may be delayed for not more than 30 days in extraordinary circumstances.

(c) **PROOF REQUIREMENTS.**—(1) A citizen applying for a certificate must prove that the citizen is fit, willing, and able to provide the transportation referred to in section 41102 of this title and to comply with this part.

(2) A person opposing a citizen applying for a certificate must prove that the transportation referred to in section 41102(b)(2) of this title is not consistent with the public convenience and necessity. The transportation is deemed to be consistent with the public convenience and necessity unless the Secretary finds, by a preponderance of the evidence, that the transportation is not consistent with the public convenience and necessity.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1121.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 41108(a) | 49 App.:1371(b). | Aug. 23, 1958, Pub. L. 85-726, §401(b), 72 Stat. 754; Oct. 24, 1978, Pub. L. 95-504, §6, 92 Stat. 1710. |
| | 49 App.:1551(b)(1)(E). | Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704. |
| 41108(b) | 49 App.:1371(c). | Aug. 23, 1958, Pub. L. 85-726, 401(c), 72 Stat. 754; re-stated Oct. 24, 1978, Pub. L. 95-504, §7(a), 92 Stat. 1711. |
| | 49 App.:1551(b)(1)(E). | |
| 41108(c) | 49 App.:1371(d)(9). | Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §401(d)(9); added Oct. 24, 1978, Pub. L. 95-504, §14, 92 Stat. 1719. |
| | 49 App.:1551(b)(1)(E). | |

In subsection (a), the words “of public convenience and necessity under section 41102 of this title” are added for clarity.

In subsection (b)(1), before clause (A), the words “give due notice thereof to the public by” are omitted as surplus. The word “response” is substituted for “protest or memorandum” to eliminate unnecessary words. The words “requested by such application” are omitted as surplus. Clause (A) is substituted for 49 App.:1371(c)(1)(A) for clarity and consistency. Clause (B) is substituted for 49 App.:1371(c)(1)(B) to eliminate unnecessary words.

In subsection (b)(2), the words “An order of dismissal issued by the Secretary under paragraph (1)(C) of this subsection” are substituted for “Any order of dismissal of an application issued by the Board without setting such application for a hearing or beginning to make a determination with respect to such application under such simplified procedures” to eliminate unnecessary words.

In subsection (b)(3), before clause (A), the words “If the Secretary provides an opportunity for a hearing under paragraph (1)(A) of this subsection” are substituted for “If the Board determines that any application should be set for a public hearing under clause (A) of the second sentence of paragraph (1) of this subsection” to eliminate unnecessary words. The words “provides the opportunity” are substituted for “of such

determination” for clarity. The words “for a certificate” are omitted as surplus. The words “to provide” are substituted for “to engage in” for consistency in the revised title.

In subsection (b)(4), the words “If the Secretary acts under paragraph (1)(B) of this subsection” are added for clarity. The words “after beginning the procedure on the application” are substituted for “after the Board begins to make a determination with respect to an application under the simplified procedures established by the Board in regulations pursuant to subsection (p) of this section” to eliminate unnecessary words.

In subsection (b)(5), the word “particular” is omitted as surplus. The words “by order” are omitted as surplus because of 5:ch. 5, subch. II.

In subsection (c)(1), the words “In any determination as to whether or not” are omitted as surplus. The word “provide” is substituted for “perform” for consistency in the revised title. The word “properly” is omitted as surplus. The word “comply” is substituted for “conform” for consistency in the revised title.

In subsection (c)(2), the words “In any determination as to whether” are omitted as surplus. The reference is to section 41102(b)(2), rather than 41102(a), of the revised title to reflect the termination of authority under 49 App.:1551(a)(1)(A).

§ 41109. Terms of certificates

(a) **GENERAL.**—(1) Each certificate issued under section 41102 of this title shall specify the type of transportation to be provided.

(2) The Secretary of Transportation—

(A) may prescribe terms for providing air transportation under the certificate that the Secretary finds may be required in the public interest; but

(B) may not prescribe a term preventing an air carrier from adding or changing schedules, equipment, accommodations, and facilities for providing the authorized transportation to satisfy business development and public demand.

(3) A certificate issued under section 41102 of this title to provide foreign air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each general route to be followed. The Secretary shall authorize an air carrier holding a certificate to provide foreign air transportation to handle and transport mail of countries other than the United States.

(4) A certificate issued under section 41102 of this title to provide foreign charter air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each geographical area in which, or between which, the transportation may be provided.

(5) As prescribed by regulation by the Secretary, an air carrier other than a charter air carrier may provide charter trips or other special services without regard to the places named or type of transportation specified in its certificate.

(b) **MODIFYING TERMS.**—(1) An air carrier may file with the Secretary an application to modify any term of its certificate issued under section 41102 of this title to provide interstate or foreign air transportation. Not later than 60 days after an application is filed, the Secretary shall—

(A) provide the carrier an opportunity for an oral evidentiary hearing on the record; or

(B) begin to consider the application under section 41111 of this title.

(2) The Secretary shall modify each term the Secretary finds to be inconsistent with the criteria under section 40101(a) and (b) of this title.

(3) An application under this subsection may not be dismissed under section 41108(b)(1)(C) of this title.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1123; Pub. L. 104-287, §5(70), Oct. 11, 1996, 110 Stat. 3396.)

HISTORICAL AND REVISION NOTES
PUB. L. 103-272

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|--|
| 41109(a)(1) .. | 49 App.:1371(e)(1) (words before semicolon). 49 App.:1551(a)(1)(C). | Aug. 23, 1958, Pub. L. 85-726, §401(e)(1), 72 Stat. 755; restated July 10, 1962, Pub. L. 87-528, §3, 76 Stat. 143. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(1)(C); added Oct. 24, 1978, Pub. L. 95-504, §40(a), 92 Stat. 1744. |
| 41109(a)(2) .. | 49 App.:1371(e)(1) (words after semicolon). 49 App.:1371(e)(4). 49 App.:1551(b)(1)(E). | Aug. 23, 1958, Pub. L. 85-726, §401(e)(3), (4), 72 Stat. 755; restated July 10, 1962, Pub. L. 87-528, §3, 76 Stat. 143; Oct. 24, 1978, Pub. L. 95-504, §15(a), (b), 92 Stat. 1719. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704. |
| 41109(a)(3) .. | 49 App.:1371(e)(2). | Aug. 23, 1958, Pub. L. 85-726, §401(e)(2), 72 Stat. 755; restated July 10, 1962, Pub. L. 87-528, §3, 76 Stat. 143; Feb. 15, 1980, Pub. L. 96-192, §5, 94 Stat. 37. |
| 41109(a)(4) .. | 49 App.:1551(b)(1)(E). 49 App.:1371(e)(3). 49 App.:1551(b)(1)(E). | |
| 41109(b) | 49 App.:1371(e)(7)(B). 49 App.:1551(b)(1)(E). | Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §401(e)(7)(B); added Oct. 24, 1978, Pub. L. 95-504, §16, 92 Stat. 1720. |

In subsection (a)(1), the text of 49 App.:1371(e)(1) (words before semicolon related to terminal and intermediate points) is omitted as obsolete because of 49 App.:1551(a)(1)(C) and because interstate and overseas air transportation is no longer regulated. The words “type of” are added for clarity. The word “provided” is substituted for “rendered” for consistency in the revised title.

In subsection (a)(2), the words before clause (A) are added for clarity. Clause (A) is substituted for 49 App.:1371(e)(1) (words after semicolon) for clarity and consistency and to eliminate unnecessary words. In clause (B), the words “may not prescribe a term preventing” are substituted for “No term, condition, or limitation of a certificate shall restrict the right” for clarity and consistency. The word “providing” is substituted for “performing” for consistency in the revised title.

In subsection (a)(3) and (4), the word “places” is substituted for “points”, and the word “provide” is substituted for “engage in”, for consistency in the revised title. The words “terminal and intermediate” are omitted as surplus. The words “between which the air carrier is authorized to provide the transportation” are added for clarity and consistency.

In subsection (a)(3), the words “or routes” are omitted because of 1:1. The words “The Secretary” are added for clarity.

In subsection (a)(4), the words “or areas” are omitted because of 1:1.

In subsection (b), the words “condition, or limitation” are omitted as being included in “term”.

In subsection (b)(1), before clause (A), the word “modify” is substituted for “removal or modification” to eliminate unnecessary words. The word “provide” is substituted for “engage in” for consistency in the revised title. In clause (A), the words “provide the carrier an opportunity” are substituted for “set such application” for consistency in the revised title and with other titles of the United States Code. In clause (B), the words “the simplified procedures established by the Board in regulations pursuant to” are omitted as surplus.

PUB. L. 104-287

This amends 49:41109(a) to clarify the restatement of 49 App.:1371(e) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 1123).

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104-287 added par. (5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-287 effective July 5, 1994, see section 8(1) of Pub. L. 104-287, set out as a note under section 5303 of this title.

§ 41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates

(a) GENERAL.—(1) Each certificate issued under section 41102 of this title is effective from the date specified in it and remains in effect until—

(A) the Secretary of Transportation suspends or revokes the certificate under this section;

(B) the end of the period the Secretary specifies for an air carrier having a certificate of temporary authority issued under section 41102(a)(2) of this title; or

(C) the Secretary certifies that transportation is no longer being provided under a certificate.

(2) On application or on the initiative of the Secretary and after notice and an opportunity for a hearing or, except as provided in paragraph (4) of this subsection, under section 41111 of this title, the Secretary may—

(A) amend, modify, or suspend any part of a certificate if the Secretary finds the public convenience and necessity require amendment, modification, or suspension; and

(B) revoke any part of a certificate if the Secretary finds that the holder of the certificate intentionally does not comply with this chapter, sections 41308-41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705-41709, 41711, 41712, and 41731-41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, a regulation or order of the Secretary under any of those provisions, or a term of its certificate.

(3) The Secretary may revoke a certificate under paragraph (2)(B) of this subsection only if the holder of the certificate does not comply, within a reasonable time the Secretary specifies, with an order to the holder requiring compliance.

(4) A certificate to provide foreign air transportation may not be amended, modified, suspended, or revoked under section 41111 of this title if the holder of the certificate requests an