

Transportation with a statement about the additional transportation and facilities necessary to provide the additional transportation. A copy of each certification and statement shall be posted for at least 20 days in the office of the Secretary. After notice and an opportunity for a hearing, the Secretary shall issue a new certificate under section 41102 of this title, or amend or modify an existing certificate under section 41110(a)(2)(A) of this title, to provide the additional transportation and facilities if the Secretary finds the additional transportation is required by the public convenience and necessity. (Pub. L. 103-272, §§1(e), 4(k)(1), July 5, 1994, 108 Stat. 1121, 1370; Pub. L. 106-31, title VI, §6003, May 21, 1999, 113 Stat. 113.)

HISTORICAL AND REVISION NOTES
PUB. L. 103-272, §1(e)

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41107	49 App.:1371(m). 49 App.:1551(a)(4)(A) (related to 49 App.:1371(m)), (b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, §401(m), 72 Stat. 757. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(4)(A) (related to §401(m)), (b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(c), (e), 98 Stat. 1703, 1704.

The words “from time to time” are omitted as surplus. The words “United States Postal Service” and “Postal Service” are substituted for “Postmaster General” in section 401(m) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 757) because of sections 4(a) and 6(o) of the Postal Reorganization Act (Public Law 91-375, 84 Stat. 773, 783). The words “in foreign air transportation or between places in Alaska” are substituted for “between any points within the United States or between the United States and foreign countries” for consistency in the revised title and because 49 App.:1551(a)(4)(A) provides that 49 App.:1371(m) no longer applies to interstate or overseas air transportation (except transportation of mail between 2 places in Alaska). In addition, Congress did not intend to maintain the regulation of domestic air transportation of mail. See section 40102(a) of the revised title defining “air transportation” to mean interstate or foreign air transportation or the transportation of mail by aircraft. The word “currently” is omitted as surplus. The words “opportunity for a” are added for consistency in the revised title and with other titles of the United States Code. The words “or certificates” are omitted as surplus because of 1:1. The word “modify” is added for consistency in the revised title.

PUB. L. 103-272, §4(k)

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41107	49 App.:1551(a)(8). 49 App.:1551(b)(3).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(8); added Oct. 4, 1984, Pub. L. 98-443, §3(c), 98 Stat. 1704; Sept. 30, 1988, Pub. L. 100-457, §346 (related to §1601(a)(8) of Federal Aviation Act of 1958), 102 Stat. 2155. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(3); added Oct. 4, 1984, Pub. L. 98-443, §3(f), 98 Stat. 1704; Sept. 30, 1988, Pub. L. 100-457, §346 (related to §1601(b)(3) of Federal Aviation Act of 1958), 102 Stat. 2155.

Section 4(k) reflects amendments to the restatement required by section 1601(a)(8) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731), as added by section 3(c) of the Civil Aeronautics Board Sunset Act

of 1984 (Public Law 98-443, 98 Stat. 1704), and section 1601(b)(3) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731), as added by section 3(f) of the Civil Aeronautics Board Sunset Act of 1984 (Public Law 98-443, 98 Stat. 1704). Section 1601(a)(8) provides that the authority under 49 App.:1371(l) and (m) and 1375(b)-(d) as those sections relate to transportation of mail by aircraft between places in Alaska (restated in sections 41107 and 41901-41903 of the revised title) ceases on January 1, 1999. Section 1601(b)(3) transfers the authority for prescribing rates for transportation of mail between places in Alaska from the Secretary of Transportation to the Postal Service effective January 1, 1999.

AMENDMENTS

1999—Pub. L. 106-31 repealed Pub. L. 103-272, §4(k). See 1994 Amendment note below.

1994—Pub. L. 103-272, §4(k)(1), which directed the amendment of this section by substituting “foreign air transportation,” for “foreign air transportation or between places in Alaska,” effective Jan. 1, 1999, was repealed by Pub. L. 106-31, §6003, effective Dec. 31, 1998.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-31, title VI, §6003, May 21, 1999, 113 Stat. 113, provided that the amendment made by section 6003 is effective Dec. 31, 1998.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-272, §4(k), July 5, 1994, 108 Stat. 1370, which provided that the amendments made by that section (amending this section and sections 41901, 41902, and 41903 of this title) were effective Jan. 1, 1999, was repealed by Pub. L. 106-31, title VI, §6003, May 21, 1999, 113 Stat. 113, effective Dec. 31, 1998.

§ 41108. Applications for certificates

(a) FORM, CONTENTS, AND PROOF OF SERVICE.—To be issued a certificate of public convenience and necessity under section 41102 of this title, a citizen of the United States must apply to the Secretary of Transportation. The application must—

- (1) be in the form and contain information required by regulations of the Secretary; and
- (2) be accompanied by proof of service on interested persons as required by regulations of the Secretary and on each community that may be affected by the issuance of the certificate.

(b) NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the certificate. Not later than 90 days after the application is filed, the Secretary shall—

- (A) provide an opportunity for a public hearing on the application;
- (B) begin the procedure under section 41111 of this title; or
- (C) dismiss the application on its merits.

(2) An order of dismissal issued by the Secretary under paragraph (1)(C) of this subsection is a final order and may be reviewed judicially under section 46110 of this title.

(3) If the Secretary provides an opportunity for a hearing under paragraph (1)(A) of this subsection, an initial or recommended decision shall be issued not later than 150 days after the

date the Secretary provides the opportunity. The Secretary shall issue a final order on the application not later than 90 days after the decision is issued. However, if the Secretary does not act within the 90-day period, the initial or recommended decision on an application to provide—

(A) interstate air transportation is a final order and may be reviewed judicially under section 46110 of this title; and

(B) foreign air transportation shall be submitted to the President under section 41307 of this title.

(4) If the Secretary acts under paragraph (1)(B) of this subsection, the Secretary shall issue a final order on the application not later than 180 days after beginning the procedure on the application.

(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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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.
41108(c)	49 App.:1551(b)(1)(E).	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.:1371(d)(9).	
	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 transpor-