



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 31st of August, 2020

INTRA-ALASKA BUSH SERVICE MAIL RATES

DOT-OST-2003-14694

Under 49 U.S.C. § 41901 *et seq.*

ORDER DENYING PETITIONS

Summary

By this Order, the U.S. Department of Transportation (the Department) denies the four petitions¹ filed on behalf of 40-Mile Air, Ltd., Air Excursions, Alaska Air Transit, Alaska Seaplanes, Bering Air, Inc., Tanana Air Service, Taquan Air, Tatonduk Outfitters, Warbelow's Air Ventures, Wright Air Service, and Yute Alaska.²

Background

The Department issued Order 2020-2-18 (February 26, 2020) to show cause why the Alaska bush service mail rates proposed should not be finalized (Show Cause Order). Customary to this proceeding, a 10-day comment period commenced with the issuance of the Show Cause Order.

On March 6, 2020, the last day of the comment period, the Department received a request from Kalinin Aviation (Alaska Seaplanes) to extend the comment period until March 30, 2020. The Department agreed to extend the comment period until March 17, 2020, and all parties to the proceeding were notified of the extension via email at 5:38 p.m. Eastern Time on March 6, 2020.

Having received no comments, the Department issued Order 2020-3-6 (March 24, 2020), finalizing the rates in the Show Cause Order. The Final Order was issued under authority delegated to the Director, Office of Aviation Analysis, in accordance to 14 CFR § 385.12 (g)(2)(i).

¹ The petitions received on April 14, April 21, June 11, and June 17, 2020 are the subject of this Order.

² Common names for air carriers are used throughout this Order, with spelling or other corrections made from original filings as necessary.

Discussion

On April 14, 2020, the Department received via Docket DOT-OST-2003-14694³ a document from Mr. Hank Myers titled “Petition for Reconsideration of Order 2020-3-6.” The Petition concludes with the request that “the Department reconsider Order 2020-3-6, and adopt the corrections to the rate established in order 2020-2-18 as outlined in the Appendices hereto.”

The Department notes that, upon the issuance of Show Cause Order, and during the customary 10-day comment period, only a request to extend the comment period was received; this request was granted, though not for the full period of time requested. The Department received no further request to extend the comment period beyond March 17, 2020, nor did it receive during this time period objections that fulfill the following requirements outlined in Order 2020-2-18:

2) Objections should be sent to AKMailRates@dot.gov. Vague or unsupported answers that do not include all proposed adjustment and backup data will not be accepted. Once finalized, these rates will be final (subject to quarterly fuel updates) until the next annual update;

3) If no objections are filed within the designated time, or if no timely-filed objections raise material issues of fact, we hereby delegate authority to the Director, Office of Aviation Analysis, to make the above rates final;

Simply filing a request to extend the comment period to a later date does not constitute an answer or objection to an order to show cause. Furthermore, even if the Department had granted the full comment period extension request made by the petitioner, no answer by the petitioner was received by the date initially requested, March 30, 2020.

Order 2020-3-6 (March 24, 2020), which finalized the rates in Order 2020-2-18, was issued under authority delegated to the Director of the Office of Aviation Analysis under 14 CFR § 385.12(g)(2)(i). Petitions for review of staff actions as defined under 14 CFR § 385.31(a) must be filed and served within seven (7) days after the date of the staff action to which they relate, unless a different period is fixed in such staff action. The Department has historically used the seven-day period in these cases. The first petition was filed on April 14, 2020, which is 21 days after the issuance of Order 2020-3-6, and 14 days after the seven-day period for petitions for review of staff actions noted herein.

Mr. Myers states in his petition that it was filed in a timely manner of 20 days. While the petition does not cite any specific statute or regulation, the Department assumes that this is in reference to 14 CFR § 302.14(a)(2), which states:

“Unless otherwise provided, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof.... Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and

³ The contents of the entire Docket may be accessed at <https://www.regulations.gov> by entering the Docket number “DOT-OST-2003-14694” into the search field.

exceptional circumstances, constituting good cause for the movant's inability to meet the established procedural dates.”

14 CFR § 302.14(a)(2) does not apply to staff action taken under 14 CFR § 385; rather, as indicated above, 14 CFR § 385.31(a) is the applicable review provision here. Moreover, the Department received the petition on April 14, 2020, which is 21 days, not 20 days, from the issue date of Order 2020-3-6. Therefore, even if 14 CFR § 302.14(a)(2) was the applicable provision, the petition was not timely filed.

Mr. Myers’s subsequent petitions received (1) on April 21, 2020, “Amended Petition for Reconsideration of Order 2020-3-6 and Leave to File an Otherwise Unauthorized Document”; (2) on June 11, 2020, “Petition for Immediate Action and Leave to File an Otherwise Unauthorized Document”; and (3) on June 17, 2020 (dated June 18, 2020), “Petition for Immediate Action and Leave to File an Otherwise Unauthorized Document” were all filed well beyond the seven-day window under 14 CFR § 385.31(a).

We will deny all of these petitions as not timely filed. The matters raised should have been presented in response to the Show Cause Order. To do so in response to an order finalizing a show cause order that was not itself contested is particularly inappropriate.⁴

ACCORDINGLY,

1. The Department denies the petition titled “Petition for Reconsideration of Order 2020-3-6” received on April 14, 2020;
2. The Department denies the petition titled “Amended Petition for Reconsideration of Order 2020-3-6 and Leave to File an Otherwise Unauthorized Document” received on April 21, 2020;
3. The Department denies the petition titled “Petition for Immediate Action and Leave to File an Otherwise Unauthorized Document” received on June 11, 2020;
4. The Department denies the petition titled “Petition for Immediate Action and Leave to File an Otherwise Unauthorized Document” received on June 17, 2020;
5. This Docket shall remain open until further order of the Department; and
6. We will serve this Order on Mr. Hank Myers, 40-Mile Air, Ltd., Air Excursions, Alaska Air Transit, Alaska Seaplanes, Bering Air, Tanana Air Service, Taquan Air, Tatonduk Outfitters,

⁴ The next annual update based on data for the year-ended September 30, 2019 will be issued in Fall 2020. Should the Petitioner continue to have concerns, that show cause order will provide an opportunity to raise issues then.

Warbelow's Air Ventures, Wright Air Service, Yute Alaska, and upon all parties on the courtesy distribution list for this Docket.

By:

David E. Short
Deputy Assistant Secretary
for Aviation and International Affairs

(SEAL)

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