procedures. Delta suggested that the Department add a provision to § 300.2 allowing an applicant or respondent in a docketed case in which an objection has been received to request a limited waiver of § 300.2(a) to permit *ex parte* communications with Department staff prior to the issuance of a show-cause order or an order instituting further procedures. Such a request would be filed in the docket, with a copy to each party, so that interested persons could comment on the appropriateness and scope of the proposed waiver.

American, Delta, and United also provided comments and suggestions concerning the use of *ex parte* communications in undocketed continuing fitness reviews, particularly those involving citizenship issues.¹ Those remarks, however, are beyond the scope of this rulemaking, which is confined to docketed initial and continuing fitness cases.

Discussion

After re-examining the need to ensure full appearance of fairness in our proceedings and the comments received on the NPRM, we now consider that the relaxation proposed in the NPRM was overly broad, going beyond the relief from the restrictions that we were seeking. As a remedy, we have decided to add two limitations to the change we proposed.

First, we will limit the exemption for *ex parte* communications allowed before the issuance of a show-cause order or order instituting a formal

United urged the Department to establish standards for determining when a continuing fitness proceeding will be docketed and, when not docketed, what *ex parte* rules will apply. United further recommended that the Department establish either a written or an oral public proceeding in any fitness review that involves some type of adjudication, although, in cases not involving citizenship issues, the Department may conduct fact-finding on an *ex parte* basis, but should institute a public proceeding, and issue a reviewable order, if any "substantive issue" relative to a carrier's fitness is discovered. proceeding to those initiated by Department career staff for the purpose of investigating or clarifying information filed by the applicant or other interested person, and responses thereto. Such an exception corresponds to that granted to Department staff in § 300.2(c)(3) in connection with the investigation phase of enforcement proceedings.

Second, we believe that there is merit in Delta's suggestion that if an applicant or other interested person needs to discuss a substantive matter with Department staff involving a docketed proceeding in which an objection has been received, but before the issuance of a show-cause order or an order instituting further procedures, that person should be able to file in the docket and serve on all parties, using the guidelines set forth in Rule 18 (14 CFR 302.18), a request for a waiver from § 300.2(a), setting forth the scope of the proposed waiver and the reasons for the request. Any interested person could then file an answer to the waiver request, commenting on its merits or scope, which comments the Department would consider in ruling on the request. The responsibility for ruling on such waiver requests would be delegated to the Director of the Office of Aviation Analysis, Office of the Assistant Secretary for Aviation and International Affairs.

By thus limiting the instigation of *ex* parte communications, we intend to forestall even the appearance of improper influence on the Department's decision-making process. However, this limitation by no means precludes any interested person from providing unsolicited written comments containing relevant information concerning the initial or continuing fitness or citizenship of an applicant or air carrier at any time, including in response to either an application or to any show-cause order that may be issued, whether or not a public proceeding is in progress. If any such information is provided, it will be placed in any open docket and may be discussed in a show-cause or other order.

Conclusion

After carefully weighing the comments provided in response to the NPRM, and for the reasons discussed above, we have decided to finalize the proposed amendment with the changes described above. We are also amending 14 CFR Part 385 to add a new subparagraph (§ 385.14(p)) stating the authority of the Director of the Office of Aviation Analysis to approve or deny requests for waivers from § 300.2(a) in docketed air carrier initial certificate application and continuing fitness cases.

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of this amendment and has determined that they are not "significant" within the meaning of Executive Order 12866. It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

DOT Regulatory Policies and Procedures

The amendment is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies; rather, it is being made solely for the purpose of facilitating communication between Department staff and the air carriers subject to its regulatory oversight. The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. As a result of the adoption of this amendment, fitness application costs to carriers and costs to opposing parties should be slightly lower due to the less formal procedures that would replace the current procedures.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities. For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. Based upon this evaluation, the Department certifies that the amendment would not have a significant economic impact on

¹ The three carriers all asserted that *ex parte* communications were not appropriate in continuing fitness reviews of major carriers where their citizenship was at issue, even if the case was undocketed. Delta recommended that the Department amend Part 302 of its procedural regulations to require the issuance of a public notice by the Department upon receiving continuing fitness information concerning, or a request for a disclaimer of jurisdiction or approval of a proposed transaction involving, the acquisition of potential control over a U.S. carrier by a foreign air carrier (e.g., by acquiring more than 15 percent of a U.S. carrier's voting interest and/or more than 25 percent of its total equity). If, in response to the public notice, any interested person were to file an answer requesting the establishment of a public proceeding to consider issues of fact, law or policy with respect to the proposed transaction, the Department would publish an order instituting the public proceeding.