

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

**TOYOTA MOTOR
SALES, USA, INC.**

FAA Order No. 95-12

Served: May 10, 1995

Docket No. CP93SO0269

ORDER OF CLARIFICATION

Complainant has petitioned for modification of the decision I issued in this case, which contained the following statement:

When sanction is an issue, the law judge is expected to give a reasoned explanation of the amount of the civil penalty selected, whether or not the penalty is reduced. The Administrative Procedure Act [APA] requires articulation of the law judge's sanction decision. Such articulation facilitates meaningful appellate review.

In the Matter of Toyota Motor Sales, USA, Inc., FAA Order No. 94-28 at 7 (September 30, 1994). Complainant submits that the above-cited statement may imply erroneously that hearings conducted under Section 110 of the Hazardous Materials Transportation Act (HMTA)¹ are required to comport with all of the procedural requirements of the APA.

The quoted statement was not intended to address the issue of whether hearings under Section 110 of the HMTA must be conducted under Section 5 of the APA, 5 U.S.C. § 554. It was intended only to explain what is required of law judges under 14 C.F.R. § 13.232, the particular rule of practice that addresses what a law judge must include in the initial decision. The FAA has chosen to apply the rules of practice contained in Subpart G of 14 C.F.R. Part 13, including Section 13.232, to HMTA cases.² Whether Section 13.232 or any of the other rules of practice afford greater procedural protection to respondents than is required by the HMTA is not at issue here.

¹ 49 U.S.C. App. § 1809(a) (recodified as 49 U.S.C. § 5123).

² See 14 C.F.R. § 13.201(a)(2), providing that Subpart G is applicable to civil penalty actions alleging violations of the HMTA. See also 55 Fed. Reg. 27,548 (July 3, 1990), explaining that [Footnote continues on next page.]

Moreover, regardless of whether Section 5 of the APA, 5 U.S.C. § 554, applies to hearings under the HMTA, I have the authority to impose, through adjudication, the common-sense requirement that law judges articulate the reasons for their sanction decision. As I stated in my decision in this case, articulation of the law judge's sanction decision facilitates meaningful appellate review. FAA Order No. 94-28 at 7 (September 30, 1994).

After the deadline for filing a petition to reconsider or modify, Respondent filed a document captioned "Respondent's Reply to Complainant's Petition for Modification."³ Despite its caption, this document fails to address the issue Complainant has raised. Instead, Respondent challenges the decision on other grounds.

Respondent's filing is actually a petition to reconsider or modify rather than a reply. Because it was filed after the deadline for petitions to reconsider or modify, the arguments raised in it are untimely and will not be addressed.



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 9th day of May, 1995.

the agency has chosen to make the rules of practice applicable to civil penalty actions involving alleged violations of the HMTA, regardless of amount.

³ Respondent filed its "reply" on November 15, 1994. Section 13.234 of the Rules of Practice, 14 C.F.R. § 13.234, requires a party to file a petition to reconsider or modify with the Administrator not later than 30 days after service of the Administrator's final decision and order on appeal. The final decision and order in this case was served on September 30, 1994. Because it was served by mail, the parties had 5 additional days to file a petition to reconsider or modify. (See 14 C.F.R. § 13.211(e), providing for 5 additional days after service by mail.) As a result, the deadline for the petition to reconsider or modify was November 4, 1994, and Respondent's document filed November 15, 1994, was filed after the deadline.