

PART 13--INVESTIGATIVE AND ENFORCEMENT

PROCEDURES

Subpart G--Rules of Practice in FAA Civil Penalty

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Sec. 13.201 Applicability.

(a) This subpart applies to the following actions:

(1) A civil penalty action in which a complaint has been issued for an amount not exceeding \$50,000 for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), or a rule, regulation, or order issued thereunder.

(2) A civil penalty action in which a complaint has been issued for a

violation arising under the Federal Aviation Act of 1958, as amended (49

U.S.C. 1471, et seq.) and the Hazardous Materials Transportation Act (49

U.S.C. 1801 et seq.), or a rule, regulation, or order issued thereunder.

(b) This subpart applies only to proceedings initiated after September 7,

1988. All other cases, hearings, or other proceedings pending or in progress

before September 7, 1988, are not affected by the rules in this subpart.

(c) Notwithstanding the provisions of paragraph (a) of this section, the

United States district courts shall have exclusive jurisdiction of any civil

penalty action initiated by the Administrator:

(1) Which involves an amount in controversy in excess of \$50,000;

(2) Which is an in rem action or in which an in rem action based on the

same violation has been brought;

(3) Regarding which an aircraft subject to lien has been seized by the

United States; and

(4) In which a suit for injunctive relief based on the violation giving

rise to the civil penalty has also been brought.

Sec. 13.202 Definitions.

Administrative law judge means an administrative law judge appointed

pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel, the Assistant Chief

Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant

Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional

Counsel, the Aeronautical Center Counsel, or the Technical Center Counsel, or

an attorney on the staff of the Assistant Chief Counsel, Enforcement, the

Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe,

Africa, and Middle East Area Office, each Regional Counsel, the Aeronautical

Center Counsel, or the Technical Center Counsel, who prosecutes a civil

penalty action. An agency attorney shall not include:

(1) The Chief Counsel, the Assistant Chief Counsel for Litigation, or the

Special Counsel and Director of Civil Penalty Adjudications; or

(2) Any attorney on the staff of either the Assistant Chief

Counsel for

Litigation or the Special Counsel and Director of Civil Penalty Adjudications

who advises the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker; or

(3) Any attorney who is supervised in a civil penalty action by a person

who provides such advice to the FAA decisionmaker in that action or a factually-related action.

Attorney means a person licensed by a state, the District of Columbia, or a

territory of the United States to practice law or appear before the courts of that state or territory.

Complaint means a document issued by an agency attorney alleging a

violation of the Federal Aviation Act of 1958, as amended, or a rule,

regulation, or order issued thereunder, or the Hazardous Materials

Transportation Act, or a rule, regulation, or order issued thereunder that

has been filed with the hearing docket after a hearing has been requested

pursuant to Sec. 13.16(d)(3) or Sec. 13.16(e)(2)(ii) of this part.

FAA decisionmaker means the Administrator of the Federal Aviation

Administration, acting in the capacity of the decisionmaker on appeal, or any

person to whom the Administrator has delegated the Administrator's

decisionmaking authority in a civil penalty action. As used in this subpart,

the FAA decisionmaker is the official authorized to issue a final decision

and order of the Administrator in a civil penalty action.

Mail includes U.S. certified mail, U.S. registered mail, or use of an

overnight express courier service.

Order assessing civil penalty means a document that contains a finding of

violation of the Federal Aviation Act of 1958, as amended, or a rule,

regulation, or order issued thereunder, or the Hazardous Materials

Transportation Act, or a rule, regulation, or order issued thereunder and may

direct payment of a civil penalty. Unless an appeal is filed with the FAA

decisionmaker in a timely manner, an initial decision or order of an

administrative law judge shall be considered an order assessing civil penalty

if an administrative law judge finds that an alleged

violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

Party means the respondent or the Federal Aviation Administration (FAA).

Personal delivery includes hand-delivery or use of a contract or express messenger service. "Personal delivery" does not include the use of Government interoffice mail service.

Pleading means a complaint, an answer, and any amendment of these documents permitted under this subpart.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.

Respondent means a person, corporation, or company named in a complaint.

[Doc. No. 25690, Amdt. 13-21, 55 FR 27576, July 3, 1990, as amended by Amdt. 13-24, 58 FR 50241, Sept. 24, 1993; Amdt. 13-29, 62 FR 46866, Sept. 4, 1997]

Sec. 13.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, shall be prosecuted by an agency attorney.

(b) An agency employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action shall not, in that case or a factually-related case, participate or give advice in a decision by the administrative law judge or by the FAA decisionmaker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, the Special Counsel and Director of Civil Penalty Adjudications, or an attorney on the staff of either the Assistant Chief Counsel for

Litigation or the

Special Counsel and Director of Civil Penalty Adjudications, will advise the

FAA decisionmaker regarding an initial decision or any appeal of a civil penalty action to the FAA decisionmaker.

[Doc. No. 25690, Amdt. 13-21, 55 FR 27576, July 3, 1990, as amended by Amdt. 13-24, 58 FR 50241, Sept. 24, 1993]

Sec. 13.204 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart.

An attorney or representative who represents a party may file a notice of appearance in the action, in the manner provided in Sec. 13.210 of this subpart, and shall serve a copy of the notice of appearance on each party, in the manner provided in Sec. 13.211 of this subpart, before participating in any proceeding governed by this subpart. The attorney or representative shall include the name, address, and telephone number of the attorney or representative in the notice of appearance.

(c) Any person may request a copy of a document upon payment of reasonable costs. A person may keep an original document, data, or evidence, with the consent of the administrative law judge, by substituting a legible copy of the document for the record.

Sec. 13.205 Administrative law judges.

(a) Powers of an administrative law judge. In accordance with the rules of

this subpart, an administrative law judge may:

- (1) Give notice of, and hold, prehearing conferences and hearings;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;
- (4) Rule on offers of proof;
- (5) Receive relevant and material evidence;
- (6) Regulate the course of the hearing in accordance with

the rules of this
subpart;

(7) Hold conferences to settle or to simplify the issues by
consent of the
parties;

(8) Dispose of procedural motions and requests; and

(9) Make findings of fact and conclusions of law, and issue
an initial
decision.

(b) Limitations on the power of the administrative law
judge. The

administrative law judge shall not issue an order of
contempt, award costs to

any party, or impose any sanction not specified in this
subpart. If the

administrative law judge imposes any sanction not specified
in this subpart,

a party may file an interlocutory appeal of right with the
FAA decisionmaker

pursuant to Sec. 13.219(c)(4) of this subpart. This section
does not preclude

an administrative law judge from issuing an order that bars a
person from a

specific proceeding based on a finding of obstreperous or
disruptive behavior

in that specific proceeding.

(c) Disqualification. The administrative law judge may
disqualify himself

or herself at any time. A party may file a motion, pursuant
to Sec.

13.218(f)(6), requesting that an administrative law judge be
disqualified

from the proceedings.

[Doc. No. 25690, Amdt. 13-21, 55 FR 27575, July 3, 1990;
Amdt. 13-21, 55 FR
29293, July 18, 1990]

Sec. 13.206 Intervention.

(a) A person may submit a motion for leave to intervene as
a party in a

civil penalty action. Except for good cause shown, a motion
for leave to

intervene shall be submitted not later than 10 days before
the hearing.

(b) If the administrative law judge finds that intervention
will not unduly

broaden the issues or delay the proceedings, the
administrative law judge may

grant a motion for leave to intervene if the person will be
bound by any

order or decision entered in the action or the person has a
property,

financial, or other legitimate interest that may not be
addressed adequately

by the parties. The administrative law judge may determine the extent to which an intervenor may participate in the proceedings.

Sec. 13.207 Certification of documents.

(a) Signature required. The attorney of record, the party, or the party's representative shall sign each document tendered for filing with the hearing docket clerk, the administrative law judge, the FAA decisionmaker on appeal, or served on each party.

(b) Effect of signing a document. By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney,

the party, or the party's representative has read the document and, based on

reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is--

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for

extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass

any person, not made to cause unnecessary delay, not made to cause needless

increase in the cost of the proceedings, or for any other improper purpose.

(c) Sanctions. If the attorney of record, the party, or the party's

representative signs a document in violation of this section, the

administrative law judge or the FAA decisionmaker shall:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in

violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that

issue by the party who filed the appeal until an initial decision has been

entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision

to the FAA decisionmaker.

Sec. 13.208 Complaint.

(a) Filing. The agency attorney shall file the original and one copy of the complaint with the hearing docket clerk, or may file a written motion pursuant to Sec. 13.218(f)(2)(i) of this subpart instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing.

The agency attorney should suggest a location for the hearing when filing the complaint.

(b) Service. An agency attorney shall personally deliver or mail a copy of the complaint on the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action.

(c) Contents. A complaint shall set forth the facts alleged, any regulation allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

(d) Motion to dismiss allegations or complaint. Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred on or after August 2, 1990, and more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

(1) An administrative law judge may not grant the motion and dismiss the complaint or part of the complaint if the administrative law judge finds that the agency has shown good cause for any delay in issuing the notice of proposed civil penalty.

(2) If the agency fails to show good cause for any delay, an administrative law judge may dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued the notice of proposed civil penalty to the respondent.

(3) A party may appeal the administrative law judge's ruling on the motion to dismiss the complaint or any part of the complaint in accordance with Sec.

13.219(b) of this subpart.

EFFECTIVE DATE NOTE: At 55 FR 27575, July 3, 1990, Sec. 13.208 was added effective Aug. 2, 1990.

[Doc. No. 25690, Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended by Amdt. 13-22, 55 FR 31176, Aug. 1, 1990]

Sec. 13.209 Answer.

(a) Writing required. A respondent shall file a written answer to the complaint, or may file a written motion pursuant to Sec. 13.208(d) or Sec. 13.218(f)(1-4) of this subpart instead of filing an answer, not later than 30 days after service of the complaint. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten.

(b) Filing and address. A person filing an answer shall personally deliver or mail the original and one copy of the answer for filing with the hearing docket clerk, not later than 30 days after service of the complaint, to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk. The person filing an answer should suggest a location for the hearing when filing the answer.

(c) Service. A person filing an answer shall serve a copy of the answer on the agency attorney who filed the complaint.

(d) Contents. An answer shall specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer.

(e) Specific denial of allegations required. A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of

that allegation. A general denial of the complaint is deemed a failure to file an answer.

(f) Failure to file answer. A person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint.

Sec. 13.210 Filing of documents.

(a) Address and method of filing. A person tendering a document for filing shall personally deliver or mail the signed original and one copy of each document to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk. A person shall serve a copy of each document on each party in accordance with Sec. 13.211 of this subpart.

(b) Date of filing. A document shall be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(c) Form. Each document shall be typewritten or legibly handwritten.

(d) Contents. Unless otherwise specified in this subpart, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document.

[Doc. No. 25690, Amdt. 13-21, 55 FR 27575, July 3, 1990;
Amdt. 13-21, 55 FR
29293, July 18, 1990]

Sec. 13.211 Service of documents.

(a) General. A person shall serve a copy of any document filed with the Hearing Docket on each party at the time of filing. Service on a party's attorney of record or a party's designated representative may be considered adequate service on the party.

(b) Type of service. A person may serve documents by personal delivery or

by mail.

(c) Certificate of service. A person may attach a certificate of service to a document tendered for filing with the hearing docket clerk. A certificate of service shall consist of a statement, dated and signed by the person filing the document, that the document was personally delivered or mailed to each party on a specific date.

(d) Date of service. The date of service shall be the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) Additional time after service by mail. Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period.

(f) Service by the administrative law judge. The administrative law judge shall serve a copy of each document including, but not limited to, notices of prehearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) Valid service. A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. The service shall be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.

(h) Presumption of service. There shall be a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

Sec. 13.212 Computation of time.

(a) This section applies to any period of time prescribed or allowed by

this subpart, by notice or order of the administrative law judge, or by any applicable statute.

(b) The date of an act, event, or default, after which a designated time

period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time

unless it is a Saturday, Sunday, or a legal holiday. If the last day of the

time period is a Saturday, Sunday, or legal holiday, the time period runs

until the end of the next day that is not a Saturday, Sunday, or legal

holiday.

Sec. 13.213 Extension of time.

(a) Oral requests. The parties may agree to extend for a reasonable period

the time for filing a document under this subpart. If the parties agree, the

administrative law judge shall grant one extension of time to each party. The

party seeking the extension of time shall submit a draft order to the

administrative law judge to be signed by the administrative law judge and

filed with the hearing docket clerk. The administrative law judge may grant

additional oral requests for an extension of time where the parties agree to

the extension.

(b) Written motion. A party shall file a written motion for an extension of

time with the administrative law judge not later than 7 days before the

document is due unless good cause for the late filing is shown. A party

filing a written motion for an extension of time shall serve a copy of the

motion on each party. The administrative law judge may grant the extension of

time if good cause for the extension is shown.

(c) Failure to rule. If the administrative law judge fails to rule on a

written motion for an extension of time by the date the document was due, the

motion for an extension of time is deemed granted for no more than 20 days

after the original date the document was to be filed.

Sec. 13.214 Amendment of pleadings.

(a) Filing and service. A party shall file the amendment with the administrative law judge and shall serve a copy of the amendment on all parties to the proceeding.

(b) Time. A party shall file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) Responses. The administrative law judge shall allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the administrative law judge.

Sec. 13.215 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge shall dismiss the proceedings under this subpart with prejudice.

Sec. 13.216 Waivers.

Waivers of any rights provided by statute or regulation shall be in writing or by stipulation made at a hearing and entered into the record. The parties shall set forth the precise terms of the waiver and any conditions.

Sec. 13.217 Joint procedural or discovery schedule.

(a) General. The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) Form and content of schedule. If the parties agree to a joint procedural or discovery schedule, one of the parties shall file the joint schedule with the administrative law judge, setting forth the dates to which the parties have agreed, and shall serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party shall sign the original joint schedule to be filed with the administrative law judge.

(c) Time. The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) Order establishing joint schedule. The administrative law judge shall approve the joint schedule filed by the parties. One party shall submit a draft order establishing a joint schedule to the administrative law judge to be signed by the administrative law judge and filed with the hearing docket clerk.

(e) Disputes. The administrative law judge shall resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) Sanctions for failure to comply with joint schedule. If a party fails to comply with the administrative law judge's order establishing a joint

schedule, the administrative law judge may direct that party to comply with a

motion to discovery request or, limited to the extent of the party's failure

to comply with a motion or discovery request, the administrative law judge

may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's

evidence at the

hearing, or

(4) Preclude that portion of the testimony of that party's witnesses at the

hearing.

Sec. 13.218. Motions.

(a) General. A party applying for an order or ruling not specifically

provided in this subpart shall do so by motion. A party shall comply with the

requirements of this section when filing a motion with the administrative law

judge. A party shall serve a copy of each motion on each party.

(b) Form and contents. A party shall state the relief sought by the motion

and the particular grounds supporting that relief. If a party has evidence in

support of a motion, the party shall attach any supporting evidence,

including affidavits, to the motion.

(c) Filing of motions. A motion made prior to the hearing must be in

writing. Unless otherwise agreed by the parties or for good cause shown, a

party shall file any prehearing motion, and shall serve a copy on each party,

not later than 30 days before the hearing. Motions introduced during a

hearing may be made orally on the record unless the administrative law judge

directs otherwise.

(d) Answers to motions. Any party may file an answer, with affidavits or

other evidence in support of the answer, not later than 10 days after service

of a written motion on that party. When a motion is made during a hearing,

the answer may be made at the hearing on the record, orally or in writing,

within a reasonable time determined by the administrative law judge.

(e) Rulings on motions. The administrative law judge shall rule on all

motions as follows:

(1) Discovery motions. The administrative law judge shall resolve all pending discovery motions not later than 10 days before the hearing.

(2) Prehearing motions. The administrative law judge shall resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge shall serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge shall issue rulings and orders in writing and shall serve a copy of the ruling or order on each party.

(3) Motions made during the hearing. The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) Specific motions. A party may file the following motions with the administrative law judge:

(1) Motion to dismiss for insufficiency. A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the administrative law judge denies the motion to dismiss the complaint for insufficiency, the respondent shall file an answer not later than 10 days after service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or a violation of the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder.

(2) Motion to dismiss. A party may file a motion to dismiss, specifying the grounds for dismissal. If an administrative law judge grants a motion to dismiss in part, a party may appeal the administrative law judge's ruling on the motion to dismiss under Sec. 13.219(b) of this subpart.

(i) Motion to dismiss a request for a hearing. An agency attorney may file a motion to dismiss a request for a hearing instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney

shall file the complaint and shall serve a copy of the complaint on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal pursuant to Sec. 13.233 of this subpart. If required by the decision on appeal, the agency attorney shall file a complaint and shall serve a copy of the complaint on each party not later than 10 days after service of the decision on appeal.

(ii) Motion to dismiss a complaint. A respondent may file a motion to dismiss a complaint instead of filing an answer. If the motion to dismiss is not granted, the respondent shall file an answer and shall serve a copy of the answer on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the agency attorney may file an appeal pursuant to Sec. 13.233 of this subpart. If required by the decision on appeal, the respondent shall file an answer and shall serve a copy of the answer on each party not later than 10 days after service of the decision on appeal.

(3) Motion for more definite statement. A party may file a motion for more definite statement of any pleading which requires a response under this subpart. A party shall set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and shall submit the details that the party believes would make the allegation or response definite and certain.

(i) Complaint. A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the administrative law judge grants the motion, the agency attorney shall supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the administrative law

judge shall strike

the allegations in the complaint to which the motion is directed. If the

administrative law judge denies the motion, the respondent shall file an

answer and shall serve a copy of the answer on each party not later than 10

days after service of the order of denial.

(ii) Answer. An agency attorney may file a motion requesting a more

definite statement if an answer fails to respond clearly to the allegations

in the complaint. If the administrative law judge grants the motion, the

respondent shall supply a more definite statement not later than 15 days

after service of the ruling on the motion. If the respondent fails to supply

a more definite statement, the administrative law judge shall strike those

statements in the answer to which the motion is directed. The respondent's

failure to supply a more definite statement may be deemed an admission of

unanswered allegations in the complaint.

(4) Motion to strike. Any party may make a motion to strike any

insufficient allegation or defense, or any redundant, immaterial, or

irrelevant matter in a pleading. A party shall file a motion to strike with

the administrative law judge and shall serve a copy on each party before a

response is required under this subpart or, if a response is not required,

not later than 10 days after service of the pleading.

(5) Motion for decision. A party may make a motion for decision, regarding

all or any part of the proceedings, at any time before the administrative law

judge has issued an initial decision in the proceedings. The administrative

law judge shall grant a party's motion for decision if the pleadings,

depositions, answers to interrogatories, admissions, matters that the

administrative law judge has officially noticed, or evidence introduced

during the hearing show that there is no genuine issue of material fact and

that the party making the motion is entitled to a decision as a matter of

law. The party making the motion for decision has the burden of showing that

there is no genuine issue of material fact disputed by the parties.

(6) Motion for disqualification. A party may file a motion

for

disqualification with the administrative law judge and shall serve a copy on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but shall make the motion before the administrative law judge files an initial decision in the proceedings.

(i) Motion and supporting affidavit. A party shall state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing disqualification, in the motion for disqualification. A party shall submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) Answer. A party shall respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) Decision on motion for disqualification. The administrative law judge shall render a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge shall withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge shall deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

(iv) Appeal. A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with Sec. 13.219(b) of this subpart.

Sec. 13.219 Interlocutory appeals.

(a) General. Unless otherwise provided in this subpart, a party may not

appeal a ruling or decision of the administrative law judge to the FAA

decisionmaker until the initial decision has been entered on the record. A

decision or order of the FAA decisionmaker on the interlocutory appeal does

not constitute a final order of the Administrator for the purposes of

judicial appellate review under section 1006 of the Federal Aviation Act of

1958, as amended.

(b) Interlocutory appeal for cause. If a party files a written request for

an interlocutory appeal for cause with the administrative law judge, or

orally requests an interlocutory appeal for cause, the proceedings are stayed

until the administrative law judge issues a decision on the request. If the

administrative law judge grants the request, the proceedings are stayed until

the FAA decisionmaker issues a decision on the interlocutory appeal. The

administrative law judge shall grant an interlocutory appeal for cause if a

party shows that delay of the appeal would be detrimental to the public

interest or would result in undue prejudice to any party.

(c) Interlocutory appeals of right. If a party notifies the administrative

law judge of an interlocutory appeal of right, the proceedings are stayed

until the FAA decisionmaker issues a decision on the interlocutory appeal. A

party may file an interlocutory appeal with the FAA decisionmaker, without

the consent of the administrative law judge, before an initial decision has

been entered in the case of:

(1) A ruling or order by the administrative law judge barring a person from the proceedings.

(2) Failure of the administrative law judge to dismiss the proceedings in

accordance with Sec. 13.215 of this subpart.

(3) A ruling or order by the administrative law judge in violation of Sec.

13.205(b) of this subpart.

(d) Procedure. A party shall file a notice of interlocutory appeal, with

supporting documents, with the FAA decisionmaker and the hearing docket

clerk, and shall serve a copy of the notice and supporting documents on each

party and the administrative law judge, not later than 10 days after the

administrative law judge's decision forming the basis of an

interlocutory

appeal of right or not later than 10 days after the administrative law

judge's decision granting an interlocutory appeal for cause, whichever is

appropriate. A party shall file a reply brief, if any, with the FAA

decisionmaker and serve a copy of the reply brief on each party, not later

than 10 days after service of the appeal brief. The FAA decisionmaker shall

render a decision on the interlocutory appeal, on the record and as a part of

the decision in the proceedings, within a reasonable time after receipt of

the interlocutory appeal.

(e) The FAA decisionmaker may reject frivolous, repetitive, or dilatory

appeals, and may issue an order precluding one or more parties from making

further interlocutory appeals in a proceeding in which there have been

frivolous, repetitive, or dilatory interlocutory appeals.

Sec. 13.220 Discovery.

(a) Initiation of discovery. Any party may initiate discovery described in

this section, without the consent or approval of the administrative law

judge, at any time after a complaint has been filed in the proceedings.

(b) Methods of discovery. The following methods of discovery are permitted

under this section: depositions on oral examination or written questions of

any person; written interrogatories directed to a party; requests for

production of documents or tangible items to any person; and requests for

admission by a party. A party is not required to file written interrogatories

and responses, requests for production of documents or tangible items and

responses, and requests for admission and response with the administrative

law judge or the hearing docket clerk. In the event of a discovery dispute, a

party shall attach a copy of these documents in support of a motion made

under this section.

(c) Service on the agency. A party shall serve each discovery request

directed to the agency or any agency employee on the agency attorney of

record.

(d) Time for response to discovery requests. Unless otherwise directed by this subpart or agreed by the parties, a party shall respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days of service of the request.

(e) Scope of discovery. Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) Limiting discovery. The administrative law judge shall limit the frequency and extent of discovery permitted by this section if a party shows that--

- (1) The information requested is cumulative or repetitious;
- (2) The information requested can be obtained from another less burdensome and more convenient source;
- (3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or
- (4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) Confidential orders. A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order with the administrative law judge and

shall serve a copy

of the motion for a confidential order on each party.

(1) The party or person making the motion must show that the confidential

order is necessary to protect the information from disclosure to the public.

(2) If the administrative law judge determines that the requested material

is not necessary to decide the case, the administrative law judge shall

preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material

may be disclosed during discovery, the administrative law judge may order

that the material may be discovered and disclosed under limited conditions or

may be used only under certain terms and conditions.

(4) If the administrative law judge determines that the requested material

is necessary to decide the case and that a confidential order is warranted,

the administrative law judge shall provide:

(i) An opportunity for review of the document by the parties off the

record;

(ii) Procedures for excluding the information from the record; and

(iii) Order that the parties shall not disclose the information in any

manner and the parties shall not use the information in any other proceeding.

(h) Protective orders. A party or a person who has received a request for

discovery may file a motion for protective order with the administrative law

judge and shall serve a copy of the motion for protective order on each

party. The party or person making the motion must show that the protective

order is necessary to protect the party or the person from annoyance,

embarrassment, oppression, or undue burden or expense. As part of the

protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and

conditions, including a designation of the time or place for discovery or a

determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain

matters during discovery.

(i) Duty to supplement or amend responses. A party who has responded to a

discovery request has a duty to supplement or amend the

response, as soon as

the information is known, as follows:

(1) A party shall supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party shall supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party shall supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) Depositions. The following rules apply to depositions taken pursuant to this section:

(1) Form. A deposition shall be taken on the record and reduced to writing.

The person being deposed shall sign the deposition unless the parties agree to waive the requirement of a signature.

(2) Administration of oaths. Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party shall take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In foreign countries, a party shall take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) Notice of deposition. A party shall serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, on the administrative law judge, on the hearing docket clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge.

If a subpoena duces tecum is to be served on the person to be examined, the party shall attach a copy of the subpoena duces tecum that describes the materials to be produced at the deposition to the notice of deposition.

(4) Use of depositions. A party may use any part or all of

a deposition at

a hearing authorized under this subpart only upon a showing of good cause.

The deposition may be used against any party who was present or represented

at the deposition or who had reasonable notice of the deposition.

(k) Interrogatories. A party, the party's attorney, or the party's

representative may sign the party's responses to interrogatories. A party

shall answer each interrogatory separately and completely in writing. If a

party objects to an interrogatory, the party shall state the objection and

the reasons for the objection. An opposing party may use any part or all of a

party's responses to interrogatories at a hearing authorized under this

subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party shall not serve more than 30 interrogatories to each other

party. Each subpart of an interrogatory shall be counted as a separate

interrogatory.

(2) A party shall file a motion for leave to serve additional

interrogatories on a party with the administrative law judge before serving

additional interrogatories on a party. The administrative law judge shall

grant the motion only if the party shows good cause for the party's failure

to inquire about the information previously and that the information cannot

reasonably be obtained using less burdensome discovery methods or be obtained

from other sources.

(1) Requests for admission. A party may serve a written request for

admission of the truth of any matter within the scope of discovery under this

section or the authenticity of any document described in the request. A party

shall set forth each request for admission separately. A party shall serve

copies of documents referenced in the request for admission unless the

documents have been provided or are reasonably available for inspection and

copying.

(1) Time. A party's failure to respond to a request for admission, in

writing and signed by the attorney or the party, not later than 30 days after

service of the request, is deemed an admission of the truth of the statement

or statements contained in the request for admission. The administrative law

judge may determine that a failure to respond to a request for admission is

not deemed an admission of the truth if a party shows that the failure was

due to circumstances beyond the control of the party or the party's attorney.

(2) Response. A party may object to a request for admission and shall state

the reasons for objection. A party may specifically deny the truth of the

matter or describe the reasons why the party is unable to truthfully deny or

admit the matter. If a party is unable to deny or admit the truth of the

matter, the party shall show that the party has made reasonable inquiry into

the matter or that the information known to, or readily obtainable by, the

party is insufficient to enable the party to admit or deny the matter. A

party may admit or deny any part of the request for admission. If the

administrative law judge determines that a response does not comply with the

requirements of this rule or that the response is insufficient, the matter is

deemed admitted.

(3) Effect of admission. Any matter admitted or deemed admitted under this

section is conclusively established for the purpose of the hearing and

appeal.

(m) Motion to compel discovery. A party may make a motion to compel

discovery if a person refuses to answer a question during a deposition, a

party fails or refuses to answer an interrogatory, if a person gives an

evasive or incomplete answer during a deposition or when responding to an

interrogatory, or a party fails or refuses to produce documents or tangible

items. During a deposition, the proponent of a question may complete the

deposition or may adjourn the examination before making a motion to compel if

a person refuses to answer.

(n) Failure to comply with a discovery order or order to compel. If a party

fails to comply with a discovery order or an order to compel, the

administrative law judge, limited to the extent of the party's failure to

comply with the discovery order or motion to compel, may:

- (1) Strike that portion of a party's pleadings;
- (2) Preclude prehearing or discovery motions by that party;
- (3) Preclude admission of that portion of a party's evidence at the hearing; or
- (4) Preclude that portion of the testimony of that party's witnesses at the hearing.

Sec. 13.221 Notice of hearing.

(a) Notice. The administrative law judge shall give each party at least 60 days notice of the date, time, and location of the hearing.

(b) Date, time, and location of the hearing. The administrative law judge to whom the proceedings have been assigned shall set a reasonable date, time, and location for the hearing. The administrative law judge shall consider the

need for discovery and any joint procedural or discovery schedule submitted

by the parties when determining the hearing date. The administrative law

judge shall give due regard to the convenience of the parties, the location

where the majority of the witnesses reside or work, and whether the location

is served by a scheduled air carrier.

(c) Earlier hearing. With the consent of the administrative law judge, the

parties may agree to hold the hearing on an earlier date than the date

specified in the notice of hearing.

Sec. 13.222 Evidence.

(a) General. A party is entitled to present the party's case or defense by

oral, documentary, or demonstrative evidence, to submit rebuttal evidence,

and to conduct any cross-examination that may be required for a full and true

disclosure of the facts.

(b) Admissibility. A party may introduce any oral, documentary, or

demonstrative evidence in support of the party's case or defense. The

administrative law judge shall admit any oral, documentary, or demonstrative

evidence introduced by a party but shall exclude irrelevant, immaterial, or

unduly repetitious evidence.

(c) Hearsay evidence. Hearsay evidence is admissible in

proceedings

governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

Sec. 13.223 Standard of proof.

The administrative law judge shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof shall prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

Sec. 13.224 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

Sec. 13.225 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

Sec. 13.226 Public disclosure of evidence.

(a) The administrative law judge may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the administrative law judge and serving a copy of the motion on each party. The party shall state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge shall grant the motion to

withhold

information in the record if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to aviation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

Sec. 13.227 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than the FAA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for the FAA in any proceeding governed by this subpart to which the respondent is a party.

Sec. 13.228 Subpoenas.

(a) Request for subpoena. A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing or to require the production of documents or tangible items from the hearing docket clerk. The hearing docket clerk shall deliver the subpoena, signed by the hearing docket clerk or an administrative law judge but otherwise in blank, to the party. The party shall complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena shall serve the subpoena on the witness.

(b) Motion to quash or modify the subpoena. A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena with the administrative law judge at or before the time specified in the subpoena for compliance. The applicant shall describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not

reasonably tailored

to the scope of the proceeding, or that the subpoena is unreasonable and

oppressive. A motion to quash or modify the subpoena will stay the effect of

the subpoena pending a decision by the administrative law judge on the motion.

(c) Enforcement of subpoena. Upon a showing that a person has failed or

refused to comply with a subpoena, a party may apply to the local Federal

district court to seek judicial enforcement of the subpoena in accordance

with section 1004 of the Federal Aviation Act of 1958, as amended.

Sec. 13.229 Witness fees.

(a) General. Unless otherwise authorized by the administrative law judge,

the party who applies for a subpoena to compel the attendance of a witness at

a deposition or hearing, or the party at whose request a witness appears at a

deposition or hearing, shall pay the witness fees described in this section.

(b) Amount. Except for an employee of the agency who appears at the

direction of the agency, a witness who appears at a deposition or hearing is

entitled to the same fees and mileage expenses as are paid to a witness in a

court of the United States in comparable circumstances.

Sec. 13.230 Record.

(a) Exclusive record. The transcript of all testimony in the hearing, all

exhibits received into evidence, and all motions, applications, requests, and

rulings shall constitute the exclusive record for decision of the proceedings

and the basis for the issuance of any orders in the proceeding. Any

proceedings regarding the disqualification of an administrative law judge

shall be included in the record.

(b) Examination and copying of record. Any person may examine the record at

the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue,

SW., Room 924A, Washington, DC 20591. Any person may have a copy of the

record after payment of reasonable costs to copy the record.

Sec. 13.231 Argument before the administrative law judge.

(a) Arguments during the hearing. During the hearing, the administrative law judge shall give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) Final oral argument. At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) Posthearing briefs. The administrative law judge may request written posthearing briefs before the administrative law judge issues an initial decision in the proceedings if the administrative law judge finds that submission of written arguments would be reasonable. If a party files a written posthearing brief, the party shall include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions.

The administrative law judge shall give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

Sec. 13.232 Initial decision.

(a) Contents. The administrative law judge shall issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge shall include findings of fact and conclusions of

law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge shall make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) Oral decision. Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge shall issue the initial decision and order orally on the record.

(c) Written decision. The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge shall serve a copy of any written initial decision on each party.

(d) Order assessing civil penalty. Unless appealed pursuant to Sec. 13.233 of this subpart, the initial decision issued by the administrative law judge shall be considered an order assessing civil penalty if the administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

Sec. 13.233 Appeal from initial decision.

(a) Notice of appeal. A party may appeal the initial decision, and any decision not previously appealed pursuant to Sec. 13.219, by filing a notice of appeal with the FAA decisionmaker. A party shall file the

notice of appeal

with the Federal Aviation Administration, 800 Independence Avenue, SW., Room

924A, Washington, DC 20591, Attention: Appellate Docket Clerk. A party shall

file the notice of appeal not later than 10 days after entry of the oral

initial decision on the record or service of the written initial decision on

the parties and shall serve a copy of the notice of appeal on each party.

(b) Issues on appeal. A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of

reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable

law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors

during the hearing that support the appeal.

(c) Perfecting an appeal. Unless otherwise agreed by the parties, a party

shall perfect an appeal, not later than 50 days after entry of the oral

initial decision on the record or service of the written initial decision on

the party, by filing an appeal brief with the FAA decisionmaker.

(1) Extension of time by agreement of the parties. The parties may agree to

extend the time for perfecting the appeal with the consent of the FAA

decisionmaker. If the FAA decisionmaker grants an extension of time to

perfect the appeal, the appellate docket clerk shall serve a letter

confirming the extension of time on each party.

(2) Written motion for extension. If the parties do not agree to an

extension of time for perfecting an appeal, a party desiring an extension of

time may file a written motion for an extension with the FAA decisionmaker

and shall serve a copy of the motion on each party. The FAA decisionmaker may

grant an extension if good cause for the extension is shown in the motion.

(d) Appeal briefs. A party shall file the appeal brief with the FAA

decisionmaker and shall serve a copy of the appeal brief on each party.

(1) A party shall set forth, in detail, the party's specific objections to

the initial decision or rulings in the appeal brief. A party also shall set

forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker.

(e) Reply brief. Unless otherwise agreed by the parties, any party may file a reply brief with the FAA decisionmaker not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief shall serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party shall specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) Extension of time by agreement of the parties. The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to file the reply brief, the appellate docket clerk shall serve a letter confirming the extension of time on each party.

(2) Written motion for extension. If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension with the FAA decisionmaker and shall serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) Other briefs. The FAA decisionmaker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and shall serve a copy of the petition on each party. The party may not

file the

additional brief with the petition. The FAA decisionmaker may grant leave to

file an additional brief if the party demonstrates good cause for allowing

additional argument on the appeal. The FAA decisionmaker will allow a

reasonable time for the party to file the additional brief.

(g) Number of copies. A party shall file the original appeal brief or the

original reply brief, and two copies of the brief, with the FAA

decisionmaker.

(h) Oral argument. The FAA decisionmaker has sole discretion to permit oral

argument on the appeal. On the FAA decisionmaker's own initiative or upon

written motion by any party, the FAA decisionmaker may find that oral

argument will contribute substantially to the development of the issues on

appeal and may grant the parties an opportunity for oral argument.

(i) Waiver of objections on appeal. If a party fails to object to any

alleged error regarding the proceedings in an appeal or a reply brief, the

party waives any objection to the alleged error. The FAA decisionmaker is not

required to consider any objection in an appeal brief or any argument in the

reply brief if a party's objection is based on evidence contained on the

record and the party does not specifically refer to the pertinent evidence

from the record in the brief.

(j) FAA decisionmaker's decision on appeal. The FAA decisionmaker will

review the briefs on appeal and the oral argument, if any, to determine if

the administrative law judge committed prejudicial error in the proceedings

or that the initial decision should be affirmed, modified, or reversed. The

FAA decisionmaker may affirm, modify, or reverse the initial decision, make

any necessary findings, or may remand the case for any proceedings that the

FAA decisionmaker determines may be necessary.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's

own initiative, that is required for proper disposition of the proceedings.

The FAA decisionmaker will give the parties a reasonable opportunity to

submit arguments on the new issues before making a decision on appeal. If an

issue raised by the FAA decisionmaker requires the consideration of additional testimony or evidence, the FAA decisionmaker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the FAA decisionmaker is solely an issue of law or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the FAA decisionmaker.

(2) The FAA decisionmaker will issue the final decision and order of the

Administrator on appeal in writing and will serve a copy of the decision and

order on each party. Unless a petition for review is filed pursuant to Sec.

13.235, a final decision and order of the Administrator shall be considered

an order assessing civil penalty if the FAA decisionmaker finds that an

alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is

precedent in any other civil penalty action. Any issue, finding or

conclusion, order, ruling, or initial decision of an administrative law judge

that has not been appealed to the FAA decisionmaker is not precedent in any

other civil penalty action.

Sec. 13.234 Petition to reconsider or modify a final decision and order of

the FAA decisionmaker on appeal.

(a) General. Any party may petition the FAA decisionmaker to reconsider or

modify a final decision and order issued by the FAA decisionmaker on appeal

from an initial decision. A party shall file a petition to reconsider or

modify with the FAA decisionmaker not later than 30 days after service of the

FAA decisionmaker's final decision and order on appeal and shall serve a copy

of the petition on each party. The FAA decisionmaker will not reconsider or

modify an initial decision and order issued by an administrative law judge

that has not been appealed by any party to the FAA decisionmaker.

(b) Form and number of copies. A party shall file a petition to reconsider or modify, in writing, with the FAA decisionmaker. The party shall file the original petition with the FAA decisionmaker and shall serve a copy of the petition on each party.

(c) Contents. A party shall state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party shall describe these allegations and shall describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party shall set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party shall explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) Repetitious and frivolous petitions. The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) Reply petitions. Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply with the FAA decisionmaker. A party shall serve a copy of the reply on each party.

(f) Effect of filing petition. Unless otherwise ordered by the FAA decisionmaker, filing of a petition pursuant to this section will not stay or delay the effective date of the FAA decisionmaker's final decision and order on appeal and shall not toll the time allowed for judicial review.

(g) FAA decisionmaker's decision on petition. The FAA decisionmaker has sole discretion to grant or deny a petition to reconsider or modify. The FAA decisionmaker will grant or deny a petition to reconsider or

modify within a
reasonable time after receipt of the petition or receipt of
the reply
petition, if any. The FAA decisionmaker may affirm, modify,
or reverse the
final decision and order on appeal, or may remand the case
for any
proceedings that the FAA decisionmaker determines may be
necessary.

[Doc. No. 25690, Amdt. 13-21, 55 FR 27575, July 3, 1990;
Amdt. 13-21, 55 FR
29293, July 18, 1990]

Sec. 13.235 Judicial review of a final decision and order.

A person may seek judicial review of a final decision and
order of the
Administrator as provided in section 1006 of the Federal
Aviation Act of
1958, as amended. A party seeking judicial review of a final
decision and
order shall file a petition for review not later than 60 days
after the final
decision and order has been served on the party.