

March 2016

**FREQUENTLY ASKED QUESTIONS
ABOUT FAA CIVIL PENALTY PROCEEDINGS**

1. Q: What is the address of the FAA Hearing Docket?

A: Mailing Address (*use only when sending items by U.S. Mail*)

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
Attention: Hearing Docket Clerk, AGC-70, Wilbur Wright Building –
Suite 2W1000

Street Address (*for hand-carried personal delivery or commercial expedited deliveries, such as UPS or FEDEX.*)

Hearing Docket
Federal Aviation Administration
600 Independence Avenue, SW
Wilbur Wright Building – Suite 2W1000
Washington, DC 20591
Attention: Hearing Docket Clerk, AGC-70

See 14 C.F.R. § 13.210(a).

2. Q: What are the FAA Hearing Docket's telephone and fax numbers?

A: Tel.: (202) 267-0377.
Fax: (202) 267-1293 and (202) 267-1294.

3. Q: Are there rules governing FAA civil penalty proceedings?

A: Yes. FAA civil penalty proceedings are governed by the Rules of Practice, 14 C.F.R. § 13.16 and Part 13, subpart G (14 C.F.R. §§ 13.201 – 13.235).

4. Q: How do I get a copy of the Rules of Practice, past decisions in civil penalty cases, and other information about civil penalty proceedings?

A: The Rules of Practice and past civil penalty decisions written by the Administrator are available on the FAA's civil penalty website:
http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty.

14 C.F.R. § 13.210(e).

The Federal Aviation Regulations, 14 C.F.R. Parts 1 – 199 (including the Rules of Practice), and the Hazardous Materials Regulations, 49 C.F.R. Parts 171-175 are available on the U.S. Government Printing Office website, www.ecfr.gov.

Past decisions written by the FAA Administrator and the Administrative Law Judges in civil penalty cases are available on LEXIS (TRANS library) and WESTLAW (FTRAN-FAA database.)

5. Q: Should all documents (for example, the request for hearing, the complaint, the answer, motions, and briefs) be filed in the FAA Hearing Docket?

A: Generally, the request for hearing and all subsequent documents must be filed in the FAA Hearing Docket. *See* 14 C.F.R. §§ 13.16(f)(3), 13.16(g)(2), 13.208(a), 13.209(b), 13.210(a), 13.218(c), 13.233(a) and (e), and 13.234(a) and(e).

* Exception: A party is not required ordinarily to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission in the Hearing Docket. *See* 14 C.F.R. § 13.220(b).

The Administrative Law Judge assigned to each case will provide instructions regarding filing and service of documents.

6. Q: How do I file documents in the FAA Hearing Docket?

A: You may file documents in the FAA Hearing Docket by (1) personal delivery; (2) U.S. Mail (including U.S. certified and registered mail); or (3) commercial expedited courier. *See* 14 C.F.R. §§ 13.202 (mail) and 13.210(a).

Note about the use of fax: If you fax a document to the Hearing Docket, you also *must* send it to the Hearing Docket by personal delivery, U.S. Mail, or expedited courier.

7. Q: Do I need to send copies of documents to anyone else?

A: Yes. You must send a copy of all documents to the other party. *See* 14 C.F.R. §§ 13.211(a), 13.218(a), 13.233(a), 13.233(d), 13.233(e), 13.234(a), 13.234(e).

8. Q: Should I send copies of documents to the Administrative Law Judge?

A: You should follow the directions provided to you by the Administrative

Law Judge who is assigned to the case.

9. Q: What is the address, telephone number, and fax number of the Administrative Law Judges' office?

A: Department of Transportation
Office of Hearings, M-20
1200 New Jersey Avenue, SE (E11-310)
Washington, DC 20590
Tel.: (202) 366-2142
Fax: (202) 366-7536

10. Q: What should a party do if its address changes?

A: It is important to inform the Administrative Law Judge, the FAA Hearing Docket, and the other party about any address changes. If you do not inform them about an address change, you may not receive important documents and information.

11. Q: What happens after a hearing is requested?

A: The Agency Attorney may file a Complaint or a written motion in the FAA Hearing Docket and will send a copy to the party who requested the hearing. *See* 14 C.F.R. § 13.208.

12. Q: What is a Complaint?

A: The Complaint includes the alleged violations and the civil penalty that the Agency Attorney is seeking. *See* 14 C.F.R. § 13.208.

13. Q: The Complaint was filed. What happens next?

A: The Respondent – the person named in the complaint -- should file an “Answer” or a motion to dismiss in the FAA Hearing Docket and send a copy to the Agency Attorney. *See* 14 C.F.R. §§ 13.208(d), 13.209, 13.218(f)(1)-(4). The Administrative Law Judge may order that Respondent serve the Answer or motion to dismiss on him or her directly as well.

14. Q: What is an Answer?

A: An Answer is a written document. It may be in the form of a letter. *See* 14 C.F.R. § 13.209(a). The Answer must state whether the Respondent – the person named in the complaint -- admits, denies or does not have sufficient information to admit or deny *each* paragraph of the Complaint. *See* 14 C.F.R. § 13.209(e).

15. Q: Does the Respondent have to file an Answer or a Motion? Will documents filed before the issuance of the complaint be sufficient?

A: The Respondent must file an Answer or a Motion, regardless of what documents the Respondent may have already sent to the Agency Attorney. The Administrative Law Judge does not have copies of the documents that were sent to the Agency Attorney prior to the issuance of the Complaint.

16. Q: When is the Answer due?

A: The Answer must be filed in the FAA Hearing Docket no later than 30 days after the Agency Attorney served the Complaint. *See* 14 C.F.R. § 13.209(a). If the Agency Attorney sent the Complaint by U.S. Mail or expedited courier, the Respondent has an extra 5 days (a total of 35 days) in which to file the Answer in the Hearing Docket. *See* 14 C.F.R. § 13.211(e).

17. Q: How will the parties know when a hearing is scheduled?

A: The Administrative Law Judge will send the parties a notice of the hearing's date, time, and location. *See* 14 C.F.R. § 13.221.

18. Q: Are the documents filed in the FAA Hearing Docket available on the Internet?

A: With a few exceptions, documents filed in the FAA Hearing Docket will be made available on-line through the Federal Docket Management System at <http://www.regulations.gov>. *See* 14 C.F.R. § 13.210(e)(1). The documents also are publicly available at the FAA Hearing Docket. Consideration should be given to seeking a confidential or protective order from the Administrative Law Judge, if a party is planning to file a document that contains personal, proprietary or security information, because without a protective order, the documents will be made publicly available. *See* 14 C.F.R. §§ 13.220(g) and (h) and 13.226.

19. Q: What is a certificate of service?

A: A certificate of service is a written statement certifying that a document is being delivered or sent to the other party on a certain date at a specified address. *See* 14 C.F.R. § 13.211(c).

A party may indicate on the certificate of service the date when the document was sent to the FAA Hearing Docket and to the Administrative Law Judge, at what addresses, and by what form of delivery.

It is good practice to attach a certificate of service to each document that is

filed, although a certificate of service is not required under the Rules of Practice.

Certificates of service must be signed and dated by the person filing the document. *See* 14 C.F.R. § 13.211(c).

20. Q: What if the Respondent decides to withdraw the Request for Hearing?

A: The Respondent may withdraw the Request for Hearing at any time. *See* 14 C.F.R. § 13.215. The Respondent should file a motion to withdraw the Request for Hearing in the FAA Hearing Docket and send a copy to the Agency Attorney and the Administrative Law Judge.

The Respondent should also contact the Agency Attorney and the Administrative Law Judge by telephone or fax if a hearing has been scheduled.

The case is *not* closed (and any scheduled hearing is not canceled) until the Administrative Law Judge dismisses it.

21. Q: What if the parties reach a settlement?

A: The Agency Attorney should file a motion withdrawing the Complaint, and the Respondent should file a motion withdrawing the Request for Hearing and the Answer. These motions should be filed in the FAA Hearing Docket and sent to the Administrative Law Judge. *See* 14 C.F.R. § 13.215.

If a hearing has been scheduled, the parties should notify the Administrative Law Judge's office by telephone or fax as soon as possible.

The case is not closed (and any scheduled hearing is not canceled) until the Administrative Law Judge issues an order dismissing the case.

22. Q: When is a response to a motion due?

A: You have 10 days from the date of receipt to respond to a motion that was hand-delivered to you. If the motion was sent to you by mail or expedited courier, you have an extra 5 days (a total of 15 days) in which to respond. *See* 14 C.F.R. §§ 13.218(d), 13.211(e), 13.212.

23. Q: How does a party get a subpoena?

A: The party should contact the FAA Hearing Docket Clerk, who will provide a signed, but otherwise blank, subpoena. The party is responsible for filling out the subpoena and serving it on the witness. *See* 14 C.F.R. § 13.228(a).

It is recommended that subpoenas are served by personal delivery, certified mail, or another form of delivery service that provides delivery confirmation.

24. Q: Will the Administrative Law Judge make a decision at the end of the hearing?

A: The Administrative Law Judge may issue an oral initial decision at the end of the hearing, or a written initial decision later. *See* 14 C.F.R. §§ 13.232(b) and (c).

25. Q: May a party appeal from an initial decision?

A: Yes. Appealing from an initial decision is a two-step process.

Notice of Appeal. First, the party must file a Notice of Appeal. A Notice of Appeal is a short written document explaining that the party is appealing from an initial decision issued by an Administrative Law Judge. *See* 14 C.F.R. § 13.233(a).

Appeal Brief. Second, the party must file an Appeal Brief, in which the party presents its arguments in detail. *See* 14 C.F.R. § 13.233(c) and (d).

26. Q: When is a Notice of Appeal due?

A: A Notice of Appeal is due 10 days after the Administrative Law Judge issues an *oral* initial decision at a hearing or 15 days after the Administrative Law Judge serves a *written* initial decision by mail. *See* 14 C.F.R. §§ 13.233(a), 13.211(e), 13.212.

The original and one copy of the Notice of Appeal must be filed in the FAA Hearing Docket and a copy should be served on the opposing party. *See* 14 C.F.R. §§ 13.233(a), 13.210(a).

27. Q: When is the Appeal Brief due? Where should it be sent?

A: An Appeal Brief is due 50 days after the issuance of an *oral* initial decision at a hearing or 55 days after the issuance of a *written* decision sent by mail. *See* 14 C.F.R. §§ 13.233(c) and 13.211(e).

The original and two copies of your Appeal Brief should be filed in the FAA Hearing Docket. *See* 14 C.F.R. § 13.233(g). A copy of the Appeal Brief must be served on the opposing party. *See* 14 C.F.R. § 13.233(d).

28. Q: Who decides an appeal?

A: The Administrator of the FAA is the decisionmaker. *See* 14 C.F.R. §§ 13.202 and 13.233. The Agency Attorney who prosecutes the case does not advise the Administrator on appeals. *See* 14 C.F.R. § 13.203.

29. Q: When is the Reply Brief due? Where should it be sent?

A: A party may respond to an Appeal Brief by filing a reply brief no later than 35 days after an Appeal Brief is hand-delivered or 40 days after an Appeal Brief is sent to the party by mail or commercial expedited courier. *See* 14 C.F.R. §§ 13.233(e), 13.211(e), 13.212.

The original Reply Brief and two copies should be filed in the FAA Hearing Docket and one copy of the Reply Brief should be sent to the other party. *See* 14 C.F.R. §§ 13.233(e) and (g).

30. Q: How does a party request an extension of time in which to file a brief?

A: If a party needs additional time in which to prepare its brief, the party should ask the Administrator for an extension of time *before the due date passes*. The party should:

(1) Contact the other party and ask whether the other party would object to a request for an extension of time.

(2) File a motion or letter in the FAA Hearing Docket, requesting an extension of time, and explaining the reason that additional time is necessary, and whether the other party has agreed to the request.

(3) Send a copy of any motion or letter requesting additional time to the other party.

The Administrator may consent to an extension of time based upon an agreement between the parties to extend the due date for a brief. *See* 14 C.F.R. §§ 13.233(c)(1) and (e)(1).

If the parties do not agree to an extension of time, the Administrator will only grant the request if good cause for the extension is demonstrated in the motion. *See* 14 C.F.R. §§ 13.233(c)(2) and (e)(2).

If the due date for the brief has passed, a party seeking an extension of time should explain why the request for an extension of time is late as well as the reason that additional time is necessary to write the brief. The Administrator does not grant requests for extension of time by phone.

31. Q: What if a party files a Notice of Appeal but fails to file an Appeal Brief?

A: The Administrator may dismiss the appeal unless good cause is shown. *See* 14 C.F.R. § 13.233(d)(2).

32. Q: May a party withdraw its appeal?

A: A party may withdraw its appeal by filing a motion in the FAA Hearing Docket. The Administrator will issue an order dismissing the appeal.

33. Q: How does a Respondent pay a civil penalty?

A: The Respondent may pay the civil penalty with a certified check or money order, made payable to the Federal Aviation Administration. *See* 14 C.F.R. § 13.16(k). The Agency Attorney will provide the address to which the check or money order should be sent. The Agency Attorney will also provide information about paying a civil penalty by major credit card or electronic funds transfer.

34. Q: Is the case before the National Transportation Safety Board (NTSB)?

A: The NTSB is an independent government agency that is not connected to the FAA or the DOT. If an FAA attorney has filed a Complaint under 14 C.F.R. § 13.208, the case will be handled by an Administrative Law Judge employed by the DOT. If an appeal from the Administrative Law Judge's decision is filed, the Administrator of the FAA will decide the appeal.

NOTE

This document does not constitute legal authority or advice and should not be cited or relied upon as such. The responses to these questions are intended to help parties understand the FAA's civil penalty hearing process and to refer them to the proper legal authority, such as the Rules of Practice in Civil Penalty Actions. This document is not intended as a substitute for proper legal research. Parties and attorneys should always consult the full text of the applicable rules of practice or statutory provisions.

