

§ 13.29

14 CFR Ch. I (1-1-04 Edition)

proposed in the notice of proposed certificate action.

(b) If the final order of the Hearing Officer makes a decision on the merits, it shall contain a statement of the findings and conclusions of law on all material issues of fact and law. If the Hearing Officer finds that the allegations of the notice have been proven, but that no sanction is required, the Hearing Officer shall make appropriate findings and issue an order terminating the notice. If the Hearing Officer finds that the allegations of the notice have not been proven, the Hearing Officer shall issue an order dismissing the notice. If the Hearing Officer finds it to be equitable and in the public interest, the Hearing Officer shall issue an order terminating the proceeding upon payment by the respondent of a civil penalty in an amount agreed upon by the parties.

(c) If the order is issued in writing, it shall be served upon the parties.

[Doc. No. 13-14, 44 FR 63723, Nov. 5, 1979; as amended by Amdt. 13-15, 45 FR 20773, Mar. 31, 1980]

§ 13.29 Civil penalties: Streamlined enforcement procedures for certain security violations.

This section may be used, at the agency's discretion, in enforcement actions involving individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage where the amount of the proposed civil penalty is less than \$5,000. In these cases, sections 13.16(a), 13.16(c), and 13.16 (f) through (l) of this chapter are used, as well as paragraphs (a) through (d) of this section:

(a) *Delegation of authority.* The authority of the Administrator, under 49 U.S.C. 46301, to initiate the assessment of civil penalties for a violation of 49 U.S.C. Subtitle VII, or a rule, regulation, or order issued thereunder, is delegated to the regional Civil Aviation Security Division Manager and the regional Civil Aviation Security Deputy Division Manager for the purpose of issuing notices of violation in cases involving violations of 49 U.S.C. Subtitle VII and the FAA's regulations by individuals presenting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage. This au-

thority may not be delegated below the level of the regional Civil Aviation Security Deputy Division Manager.

(b) *Notice of violation.* A civil penalty action is initiated by sending a notice of violation to the person charged with the violation. The notice of violation contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of violation, the person charged with a violation shall:

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing a civil penalty or a compromise order shall be issued in that amount; or

(2) Submit to the agency attorney identified in the material accompanying the notice any of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the penalty amount is not warranted by the circumstances; or

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business; or

(iii) A written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents; or

(3) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

(c) *Final notice of violation and civil penalty assessment order.* A final notice of violation and civil penalty assessment order ("final notice and order") may be issued after participation in any informal proceedings as provided in paragraph (b)(2) of this section, or after failure of the respondent to respond in a timely manner to a notice of violation. A final notice and order will be sent to the individual charged with a violation. The final notice and order will contain a statement of the charges and the amount of the proposed civil

penalty and, as a result of information submitted to the agency attorney during any informal procedures, may reflect a modified allegation or proposed civil penalty.

A final notice and order may be issued—

(1) If the person charged with a violation fails to respond to the notice of violation within 30 days after receipt of that notice; or

(2) If the parties participated in any informal procedures under paragraph (b)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of violation.

(d) *Order assessing civil penalty.* An order assessing civil penalty may be issued after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, the amount of civil penalty proposed in the notice of violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, an agreed-upon amount of civil penalty that is not reflected in either the notice of violation or the final notice and order.

(3) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty when the person charged with a violation submits the amount of the proposed civil penalty that is reflected in the final notice and order.

(4) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty 16 days after receipt of the final notice and order, *unless* not later than 15 days after receipt of the final notice and order, the person charged with a violation does one of the following—

(i) Submits an agreed-upon amount of civil penalty that is not reflected in the final notice and order, in which case an order assessing civil penalty or a compromise order shall be issued in that amount; or

(ii) Requests a hearing in which case a complaint shall be filed with the hearing docket clerk.

(5) 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 to be appropriate by the administrative law judge, is warranted.

(6) 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.

[Doc. No. 27873, 61 FR 44155, Aug. 28, 1996]

Subpart D—Rules of Practice for FAA Hearings

§ 13.31 Applicability.

This subpart applies to proceedings in which a hearing has been requested in accordance with §§ 13.19(c)(5), 13.20(c), 13.20(d), 13.75(a)(2), 13.75(b), or 13.81(e).

[Amdt. 13-18, 53 FR 34655, Sept. 7, 1988]

§ 13.33 Appearances.

Any party to a proceeding under this subpart may appear and be heard in person or by attorney.

§ 13.35 Request for hearing.

(a) A request for hearing must be made in writing to the Hearing Docket, Room 924A, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591. It must describe briefly the action proposed by the FAA, and must contain a statement that a hearing is requested. A copy of the request for hearing and a copy of the answer required by paragraph (b) of this section must be served on the official who issued the notice of proposed action.

(b) An answer to the notice of proposed action must be filed with the request for hearing. All allegations in the notice not specifically denied in the answer are deemed admitted.