

a motion to dismiss for failure of the allegations in the notice of proposed action to state a violation of the FA Act or of this chapter or to show lack of qualification of the respondent. If the Hearing Officer denies the motion, the respondent shall file an answer within 10 days.

(b) [Reserved]

(c) *Motion for more definite statement.* The certificate holder may, in place of an answer, file a motion that the allegations in the notice be made more definite and certain. If the Hearing Officer grants the motion, the FAA counsel shall comply within 10 days after the date it is granted. If the Hearing Officer denies the motion the certificate holder shall file an answer within 10 days after the date it is denied.

(d) *Motion for judgment on the pleadings.* After the pleadings are closed, either party may move for a judgment on the pleadings.

(e) *Motion to strike.* Upon motion of either party, the Hearing Officer may order stricken, from any pleadings, any insufficient allegation or defense, or any immaterial, impertinent, or scandalous matter.

(f) *Motion for production of documents.* Upon motion of any party showing good cause, the Hearing Officer may, in the manner provided by Rule 34, Federal Rules of Civil Procedure, order any party to produce any designated document, paper, book, account, letter, photograph, object, or other tangible thing, that is not privileged, that constitutes or contains evidence relevant to the subject matter of the hearings, and that is in the party's possession, custody, or control.

(g) *Consolidation of motions.* A party who makes a motion under this section shall join with it all other motions that are then available to the party. Any objection that is not so raised is considered to be waived.

(h) *Answers to motions.* Any party may file an answer to any motion under this section within 5 days after service of the motion.

§ 13.51 Intervention.

Any person may move for leave to intervene in a proceeding and may become a party thereto, if the Hearing Officer, after the case is sent to the

Hearing Officer for hearing, finds that the person may be bound by the order to be issued in the proceedings or has a property or financial interest that may not be adequately represented by existing parties, and that the intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, a motion for leave to intervene may not be considered if it is filed less than 10 days before the hearing.

§ 13.53 Depositions.

After the respondent has filed a request for hearing and an answer, either party may take testimony by deposition in accordance with section 1004 of the Federal Aviation Act of 1958 (49 U.S.C. 1484) or Rule 26, Federal Rules of Civil Procedure.

§ 13.55 Notice of hearing.

The Hearing Officer shall set a reasonable date, time, and place for the hearing, and shall give the parties adequate notice thereof and of the nature of the hearing. Due regard shall be given to the convenience of the parties with respect to the place of the hearing.

§ 13.57 Subpoenas and witness fees.

(a) The Hearing Officer to whom a case is assigned may, upon application by any party to the proceeding, issue subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence at a hearing or for the purpose of taking depositions. However, the application for producing evidence must show its general relevance and reasonable scope. This paragraph does not apply to the attendance of FAA employees or to the production of documentary evidence in the custody of such an employee at a hearing.

(b) A person who applies for the production of a document in the custody of an FAA employee must follow the procedure in § 13.49(f). A person who applies for the attendance of an FAA employee must send the application, in writing, to the Hearing Officer setting forth the need for that employee's attendance.

(c) A witness in a proceeding under this subpart is entitled to the same

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fees and mileage as is paid to a witness in a court of the United States under comparable circumstances. The party at whose instance the witness is subpoenaed or appears shall pay the witness fees.

(d) Notwithstanding the provisions of paragraph (c) of this section, the FAA pays the witness fees and mileage if the Hearing Officer who issued the subpoena determines, on the basis of a written request and good cause shown, that—

(1) The presence of the witness will materially advance the proceeding; and

(2) The party at whose instance the witness is subpoenaed would suffer a serious hardship if required to pay the witness fees and mileage.

§ 13.59 Evidence.

(a) Each party to a hearing may present the party's case or defense by oral or documentary evidence, submit evidence in rebuttal, and conduct such cross-examination as may be needed for a full disclosure of the facts.

(b) Except with respect to affirmative defenses and orders of denial, the burden of proof is upon the FAA counsel.

(c) The Hearing Officer may order information contained in any report or document filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the Hearing Officer, disclosure would adversely affect the interests of any person and is not required in the public interest or is not otherwise required by statute to be made available to the public. Any person may make written objection to the public disclosure of such information, stating the ground for such objection.

§ 13.61 Argument and submittals.

The Hearing Officer shall give the parties adequate opportunity to present arguments in support of motions, objections, and the final order. The Hearing Officer may determine whether arguments are to be oral or written. At the end of the hearing the Hearing Officer may, in the discretion of the Hearing Officer, allow each party to submit written proposed findings and conclusions and supporting reasons for them.

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§ 13.63 Record.

The testimony and exhibits presented at a hearing, together with all papers, requests, and rulings filed in the proceedings are the exclusive basis for the issuance of an order. Either party may obtain a transcript from the official reporter upon payment of the fees fixed therefor.

Subpart E—Orders of Compliance Under the Hazardous Materials Transportation Act

§ 13.71 Applicability.

Whenever the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel has reason to believe that a person is engaging in the transportation or shipment by air of hazardous materials in violation of the Hazardous Materials Transportation Act, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, and the circumstances do not require the issuance of an order of immediate compliance, he may conduct proceedings pursuant to section 109 of that Act (49 U.S.C. 1808) to determine the nature and extent of the violation, and may thereafter issue an order directing compliance.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 13-19, 54 FR 39290, Sept. 25, 1989; Amdt. 13-29, 62 FR 46866, Sept. 4, 1997]

§ 13.73 Notice of proposed order of compliance.

A compliance order proceeding commences when the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel sends the alleged violator a notice of proposed order of compliance advising the alleged violator of the charges and setting forth the remedial action sought in the form of a proposed order of compliance.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 13-19, 54 FR 39290, Sept. 25, 1989; Amdt. 13-29, 62 FR 46866, Sept. 4, 1997]