

order is accepted in full settlement of the civil penalty action.

(5) If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the certified check or money order submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States district court, pursuant to the authority in 49 U.S.C. 46305, to prosecute and collect the civil penalty.

[Amdt. 13–18, 53 FR 34653, Sept. 7, 1988, as amended by Amdt. 13–20, 55 FR 15128, Apr. 20, 1990; Amdt. 13–29, 62 FR 46865, Sept. 4, 1997; Amdt. 13–32; 69 FR 59495, Oct. 4, 2004]

§ 13.16 Civil Penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.

(a) The FAA uses these procedures when it assesses a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman for a violation cited in 49 U.S.C. 46301(d)(2).

(b) *District court jurisdiction.* Notwithstanding the provisions of paragraph (a) of this section, the United States district courts have exclusive jurisdiction of any civil penalty action initiated by the FAA for violations described in those paragraphs, under 49 U.S.C. 46301(d)(4), if—

(1) The amount in controversy is more than \$50,000 for a violation committed by any person before December 12, 2003;

(2) The amount in controversy is more than \$400,000 for a violation committed by a person other than an individual or small business concern on or after December 12, 2003;

(3) The amount in controversy is more than \$50,000 for a violation committed by an individual or a small business concern on or after December 12, 2003;

(4) The action is in rem or another action in rem based on the same violation has been brought;

(5) The action involves an aircraft subject to a lien that has been seized by the Government; or

(6) Another action has been brought for an injunction based on the same violation.

(c) *Hazardous materials violations.* The FAA may assess a civil penalty against any person who knowingly commits an act in violation of 49 U.S.C. chapter 51 or a regulation prescribed or order issued under that chapter, under 49 U.S.C. 5123 and 49 CFR 1.47(k). An order assessing a civil penalty for a violation under 49 U.S.C. chapter 51, or a rule, regulation, or order issued thereunder, is issued only after the following factors have been considered:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) With respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) Such other matters as justice may require.

(d) *Order assessing civil penalty.* An order assessing civil penalty may be issued for a violation described in paragraphs (a) or (c) of this section, or as otherwise provided by statute, 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 a civil penalty for a violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation does not request a hearing under paragraph (g)(2)(ii) of this section within 15 days after receipt of a final notice of proposed civil penalty.

(3) 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.

(4) 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.

(e) *Delegation of authority.* (1) The authority of the Administrator under 49 U.S.C. 46301(d), 47531, and 5123, and 49 CFR 1.47(k) to initiate and assess civil penalties for a violation of those statutes or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(2) The authority of the Administrator under 49 U.S.C. 5123, 49 CFR 1.47(k), 49 U.S.C. 46301(d), and 49 U.S.C. 46305 to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(3) The authority of the Administrator under 49 U.S.C. 46301(f) to compromise the amount of a civil penalty imposed is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(4) The authority of the Administrator under 49 U.S.C. 5123 (e) and (f) and 49 CFR 1.47(k) to compromise the amount of a civil penalty imposed is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(f) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil pen-

alty to the person charged with a violation or to the agent for services for the person under 49 U.S.C. 46103. A notice of proposed civil penalty will be sent to the individual charged with a violation or to the president of the corporation or company charged with a violation. In response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The notice of proposed civil penalty 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 proposed civil penalty, 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 civil penalty or compromise order shall be issued in that amount;

(2) Submit to the agency attorney one 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 amount of the penalty is not warranted by the circumstances.

(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.

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

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

(g) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty may be issued after participation in informal procedures provided in paragraph(f)(2) of this section or failure to respond in a timely manner to a notice of proposed civil penalty. A final notice of proposed civil penalty will be sent to the individual charged with a

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violation, to the president of the corporation or company charged with a violation, or a person previously designated in writing by the individual, corporation, or company to receive documents in that civil penalty action. If not previously done in response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The final notice of proposed civil penalty contains 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 informal procedures, may modify an allegation or a proposed civil penalty contained in a notice of proposed civil penalty.

(1) A final notice of proposed civil penalty may be issued—

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

(ii) If the parties participated in any informal procedures under paragraph (f)(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 proposed civil penalty.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation shall do one of the following—

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

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

(h) Request for a hearing. Any person charged with a violation may request a hearing, pursuant to paragraph (f)(3) or paragraph (g)(2)(ii) of this section, to be conducted in accordance with the procedures in subpart G of this part. A person requesting a hearing shall file a written request for a hearing with the hearing docket clerk, using the appropriate address set forth in §13.210(a) of this part, and shall mail a copy of the request to the agency attorney. The re-

quest for a hearing may be in the form of a letter but must be dated and signed by the person requesting a hearing. The request for a hearing may be typewritten or may be legibly handwritten.

(i) *Hearing.* If the person charged with a violation requests a hearing pursuant to paragraph (f)(3) or paragraph (g)(2)(ii) of this section, the original complaint shall be filed with the hearing docket clerk and a copy shall be sent to the person requesting the hearing. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge shall issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that contains findings or conclusions on the allegations contained, and the civil penalty sought, in the complaint.

(j) *Appeal.* Either party may appeal the administrative law judge's initial decision to the FAA decisionmaker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to §13.233 of subpart G, the effectiveness of the initial decision is stayed until a final decision and order of the Administrator have been entered on the record. The FAA decisionmaker shall review the record and issue a final decision and order of the Administrator that affirm, modify, or reverse the initial decision. The FAA decisionmaker may assess a civil penalty but shall not assess a civil penalty in an amount greater than that sought in the complaint.

(k) *Payment.* A person shall pay a civil penalty by sending a certified check or money order, payable to the Federal Aviation Administration, to the agency attorney.

(l) *Collection of civil penalties.* If an individual does not pay a civil penalty imposed by an order assessing civil penalty or other final order, the Administrator may take action provided under the law to collect the penalty.

(m) *Exhaustion of administrative remedies and judicial review.* (1) Cases under the FAA statute. A party may petition for review only of a final decision and order of the FAA decisionmaker to the courts of appeals of the United States

for the circuit in which the individual charged resides or has his or her principal place of business or the United States Court of Appeals for the District of Columbia Circuit, under 49 U.S.C. 46110, 46301(d)(6), and 46301(g). Neither an initial decision or order issued by an administrative law judge that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action, may be appealed under those sections.

(2) *Cases under the Federal hazardous materials transportation law.* A party may seek judicial review only of a final decision and order of the FAA decisionmaker involving a violation of the Federal hazardous materials transportation law or a regulation or order issued thereunder to an appropriate district court of the United States, under 5 U.S.C. 703 and 704 and 28 U.S.C. 1331. Neither an initial decision or order issued by an administrative law judge that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action, may be appealed under these sections.

(n) *Compromise.* The FAA may compromise the amount of any civil penalty imposed under this section, under 49 U.S.C. 5123(e), 46031(f), 46303(b), or 46318 at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees not to make a finding of violation. Under such agreement, a compromise order is issued following the payment of the agreed-on amount or the signing of a promissory note. The compromise order states the following:

(i) The person has paid a civil penalty or has signed a promissory note providing for installment payments.

(ii) The FAA makes no finding of a violation.

(iii) The compromise order shall not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) An agency attorney may compromise the amount of a civil penalty

proposed in a notice, assessed in an order, or imposed in a compromise order.

[Amdt. 13-32; 70 FR 1813, Jan. 11, 2005; 70 FR 2925, Jan. 18, 2005, as amended at 70 FR 8238, Feb. 18, 2005]

§ 13.17 Seizure of aircraft.

(a) Under section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473), a State or Federal law enforcement officer, or a Federal Aviation Administration safety inspector, authorized in an order of seizure issued by the Regional Administrator of the region, or by the Chief Counsel, may summarily seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or operator.

(b) Each person seizing an aircraft under this section shall place it in the nearest available and adequate public storage facility in the judicial district in which it was seized.

(c) The Regional Administrator or Chief Counsel, without delay, sends a written notice and a copy of this section, to the registered owner of the seized aircraft, and to each other persons shown by FAA records to have an interest in it, stating the—

(1) Time, date, and place of seizure;

(2) Name and address of the custodian of the aircraft;

(3) Reasons for the seizure, including the violations believed, or judicially determined, to have been committed; and

(4) Amount that may be tendered as—

(i) A compromise of a civil penalty for the alleged violation; or

(ii) Payment for a civil penalty imposed by a Federal court for a proven violation.

(d) The Chief Counsel, or the Regional Counsel or Assistant Chief Counsel for the region or area in which an aircraft is seized under this section, immediately sends a report to the United States District Attorney for the judicial district in which it was seized, requesting the District Attorney to institute proceedings to enforce a lien against the aircraft.

(e) The Regional Administrator or Chief Counsel directs the release of a seized aircraft whenever—