

### Subpart G—Rules of Practice in FAA Civil Penalty Actions

SOURCE: Amdt. 13-21, 55 FR 27575, July 3, 1990, unless otherwise noted.

#### § 13.201 Applicability.

(a) This subpart applies to all civil penalty actions initiated under §13.16 of this part in which a hearing has been requested.

(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.

[Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended by Amdt. 13-32; 69 FR 59497, Oct. 4, 2004]

#### § 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 for Operations, the Assistant Chief Counsel, Enforcement, 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, 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 Deputy Chief Counsel for Policy and Adjudication, or the Assistant Chief Counsel for Litigation;

(2) Any attorney on the staff of the Assistant Chief Counsel for Litigation;

(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 §13.16(d)(3) or §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 decision-making 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"

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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.

[Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended by Amdt. 13-24, 58 FR 50241, Sept. 24, 1993; Amdt. 13-29, 62 FR 46866, Sept. 4, 1997; 70 FR 8238, Feb. 18, 2005]

### § 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 Deputy Chief Counsel for Policy and Adjudication, and the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation will advise the FAA decisionmaker regarding an initial decision or any appeal of a civil penalty action to the FAA decisionmaker.

[Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended by Amdt. 13-24, 58 FR 50241, Sept. 24, 1993; 70 FR 8238, Feb. 18, 2005]

### § 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

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provided in §13.210 of this subpart, and shall serve a copy of the notice of appearance on each party, in the manner provided in §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.

### § 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, pre-hearing 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 §13.219(c)(4) of this subpart. This section does not preclude an administrative law judge from issuing an order