

law judge under subpart B of this part becomes an order imposing civil penalty.

(iv) Unless a complaint is filed with a United States district court in accordance with § 406.176, if the FAA decisionmaker finds that a violation occurred and determines that a civil penalty, in an amount found appropriate by the FAA decisionmaker, is warranted, a final decision and order of the FAA decisionmaker under subpart B of this part becomes an order imposing civil penalty. If a person seeks judicial review not later than 60 days after the final decision and order has been served on the respondent, the final decision and order is stayed.

(2) [Reserved]

(f) *Compromise order.* The agency attorney at any time may agree to compromise any civil penalty with no finding of violation. Under such agreement, the agency attorney issues a compromise order stating:

(1) The respondent agrees to pay a civil penalty.

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

(3) The compromise order may not be used as evidence of a prior violation in any subsequent civil penalty action or license action.

(g) *Request for hearing.* Any respondent who has been issued a final notice of proposed civil penalty may, not later than 15 days after the date the respondent received the final notice, request a hearing under subpart B of this part.

(1) The respondent must file a written request for hearing with the Docket Management System (Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590-0001) and must serve a copy of the request on the agency attorney. Sections 406.113 and 406.115 state how filing and service must be done.

(2) The request for hearing must be dated and signed.

(h) *Method of payment.* A respondent must pay a civil penalty by check or money order, payable to the Federal Aviation Administration.

(i) *Collection of civil penalties.* If a respondent does not pay a civil penalty imposed by an order imposing civil penalty or a compromise order within

60 days after service of the final order, the FAA may refer the order to the United States Department of Treasury or Department of Justice to collect the civil penalty.

(j) *Exhaustion of administrative remedies.* A respondent may seek judicial review of a final decision and order of the FAA decisionmaker as provided in § 406.179. A respondent has not exhausted administrative remedies for purposes of judicial review if the final order is one of the following:

(1) An order imposing civil penalty issued by an agency attorney under paragraph (e)(1)(i) of this section.

(2) A final notice of proposed civil penalty that becomes an order imposing civil penalty under paragraph (e)(1)(ii) of this section.

(3) An initial decision of an administrative law judge that was not appealed to the FAA decisionmaker.

(4) A compromise order under paragraph (f) of this section.

(k) *Compromise.* The FAA may compromise or remit a civil penalty that has been proposed or imposed under this section.

§§ 406.10–406.100 [Reserved]

## Subpart B—Rules of Practice in FAA Space Transportation Adjudications

### § 406.101 Applicability.

(a) *Adjudications to which these rules apply.* These rules apply to the following adjudications:

(1) A civil penalty action in which the respondent has requested a hearing under § 406.9.

(2) [Reserved]

(b) [Reserved]

### § 406.103 Definitions that apply in part 406.

For the purpose of this part:

*Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

*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.

## § 406.105

*Complainant* in a civil penalty action means the proponent of the civil penalty in the FAA.

*FAA decisionmaker* means the Associate Administrator for Commercial Space Transportation, or the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal; or a person who has been delegated the authority to act for the FAA decisionmaker. As used in this part, the FAA decisionmaker is the official authorized to issue a final decision and order of the Secretary in an action.

*Mail* means U.S. first class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

*Party* means the respondent or the complainant.

*Personal delivery* includes hand-delivery or use of a same-day messenger service. "Personal delivery" does not include the use of Government inter-office mail service.

*Properly addressed* means using an address contained in agency records; a residential, business, or other address used by a person on any document submitted under this part; or any other address determined by other reasonable and available means.

*Respondent* means a person who has been charged with a violation.

### § 406.105 Separation of functions for prosecuting civil penalties and advising the FAA decisionmaker.

(a) *Agency attorney*. The authority to prosecute civil penalties within the FAA is exercised by an agency attorney in accordance with § 406.9.

(1) The following officials have the authority to act as the agency attorney under this part: The Deputy Chief Counsel; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel for Regulations; the Assistant Chief Counsel for Europe, Africa, and Middle East Area Office; each Regional Counsel; and each Center Counsel. This authority may be delegated further.

(2) An agency attorney may not include:

(i) The Chief Counsel or the Assistant Chief Counsel for Litigation;

(ii) Any attorney on the staff of the Assistant Chief Counsel for Litigation who advises the FAA decisionmaker re-

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garding an initial decision or any appeal to the FAA decisionmaker; or

(iii) 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.

(b) *Advisors to the FAA decisionmaker*. (1) The Chief Counsel, 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 an action to the FAA decisionmaker.

(2) An agency employee engaged in the performance of investigative or prosecutorial functions must 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.

### § 406.107 Appearances of parties, and attorneys and representatives.

(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.

(1) An attorney or representative who represents a party must file a notice of appearance in the action with the Docket Management System and must serve a copy of the notice of appearance on each other party before participating in any proceeding governed by this subpart.

(2) The attorney or representative must include his or her name, address, and telephone number in the notice of appearance.

(3) That attorney or representative in any proceeding governed by this subpart may examine the party.

(4) Service of a document on the party's attorney or representative is considered to be service on the party.

(c) An agency attorney represents the complainant.

### § 406.109 Administrative law judges—powers and limitations.

(a) *Powers of an administrative law judge*. In accordance with the rules of