

§ 406.167

14 CFR Ch. III (1–1–06 Edition)

receipt of the transcript, to prepare and submit the briefs.

§ 406.167 Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge must make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge must issue the initial decision and order orally on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge must serve a copy of any written initial decision on each party.

§ 406.173 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on an interlocutory appeal does not constitute a final order of the Secretary for the purposes of judicial review under 5 U.S.C. chapter 7.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge must grant an interlocutory appeal for cause if a party shows that delay of the interlocutory appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a party, or a party's attorney or representative, from the proceedings.

(2) A ruling or order by the administrative law judge allegedly in violation of the limitations on the administrative law judge under § 406.109(c).

(3) Failure of the administrative law judge to grant a motion for a confidentiality order based on 49 U.S.C. 70114, under § 406.117(c)(2).

(4) Failure of the administrative law judge to dismiss the proceedings in accordance with § 406.135.

(d) *Procedure.* A party must file with the Docket Management System and serve each other party a notice of interlocutory appeal, with supporting documents, not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause. A party must file with the Docket Management System a reply brief, if any, and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The FAA decisionmaker must render a decision on the interlocutory