

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 appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) *Rejection of interlocutory appeal.* The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

#### § 406.175 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to § 406.173, by filing with the Docket Management System and serving on each party a notice of appeal. A party must file the notice of appeal not later than 10 days after entry of the oral ini-

tial decision on the record or service of the written initial decision on the parties.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker, who serves a letter confirming the extension of time on each party.

(2) *Motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a motion for an extension and must serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party must file the appeal brief with the Docket Management System and serve each party.

(1) A party must set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also must set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party must specifically refer to the pertinent evidence contained in the record in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has

filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief with the Docket Management System and serve on each other party not later than 35 days after the appeal brief has been served on that party. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the record in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker, who will serve a letter confirming the extension of time on each party.

(2) *Motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file and serve a motion for an extension and must serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The FAA decisionmaker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief without permission of the FAA decisionmaker. A party may file with the Docket Management System a motion for permission to file an additional brief and must serve a copy of the motion on each other party. The party may not file the additional brief with the motion. The FAA decisionmaker may grant permission to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party must file the original brief and two copies of the brief with the Docket Management System and serve one copy on each other party.

(h) *Oral argument.* The FAA decisionmaker has sole discretion to permit oral argument on the appeal. On the FAA decisionmaker's own initiative or

upon written motion by any party, the FAA decisionmaker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection or argument in a brief if the party does not specifically refer in the brief to the pertinent evidence from the record.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, to determine if the administrative law judge committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the FAA decisionmaker requires the consideration of additional testimony or evidence, the FAA decisionmaker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the FAA decisionmaker is solely an issue of law or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the FAA decisionmaker.

(2) The FAA decisionmaker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party.

(3) A final decision and order of the FAA decisionmaker is precedent in any other civil penalty action under this part. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the FAA decisionmaker is not precedent in any other civil penalty action.

**§ 406.177 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.**

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party must file a petition to reconsider or modify with the Docket Management System not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and must serve a copy of the petition on each party. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA decisionmaker.

(b) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support, the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party must describe these allegations and must describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new

material was not discovered through due diligence prior to the hearing.

(c) *Repetitious and frivolous petition.* The FAA decisionmaker will not consider a repetitious or frivolous petition. The FAA decisionmaker may summarily dismiss any repetitious or frivolous petition to reconsider or modify.

(d) *Reply to petition.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply. A party must serve a copy of the reply on each party.

(e) *Effect of filing petition.* Unless otherwise ordered by the FAA decisionmaker, filing a petition under this section stays the effective date of the FAA decisionmaker's final decision and order on appeal, and tolls the time allowed for judicial review.

(f) *FAA decisionmaker's decision on petition.* The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

**§ 406.179 Judicial review of a final decision and order.**

(a) A person may seek judicial review of a final decision and order of the FAA decisionmaker as provided in 5 U.S.C. chapter 7 and 28 U.S.C. 1331. A party seeking judicial review must file with a United States district court.

(b) In accordance with § 406.9(e)(iv), 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.

(c) In accordance with § 406.9(i), if a respondent does not pay a civil penalty and does not file an appeal with the United States district court within 60 days after service of the final decision and order, the FAA may refer the order to the United States Department of Treasury or Department of Justice to collect the civil penalty.