

Federal Aviation Administration, DOT

§ 13.230

motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to aviation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

§ 13.227 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than the FAA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for the FAA in any proceeding governed by this subpart to which the respondent is a party.

§ 13.228 Subpoenas.

(a) *Request for subpoena.* A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing or to require the production of documents or tangible items from the hearing docket clerk. The hearing docket clerk shall deliver the subpoena, signed by the hearing docket clerk or an administrative law judge but otherwise in blank, to the party. The party shall complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena shall serve the subpoena on the witness.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena with the administrative law judge at or before the time specified in the subpoena for compliance. The applicant shall describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the local federal district court to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104 in cases under the Federal aviation statute.

[Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended at 71 FR 70465, Dec. 5, 2006]

§ 13.229 Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, shall pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 13.230 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, applications, requests, and rulings shall constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding. Any proceedings regarding the disqualification of an administrative law judge shall be included in the record.

(b) *Examination and copying of record.* Any person may examine the record at the Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building—Room 2014, Washington, DC 20591. Documents may also be examined and copied at the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Any person may have a copy of the record after payment of reasonable costs to copy the record.

[Docket No. 18884, 44 FR 63723, Nov. 5, 1979, as amended at 70 FR 8238, Feb. 18, 2005; 72 FR 68474, Dec. 5, 2007]