



**75 [4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 13**

**[Docket No.: FAA-2017-1051; Notice No. 18-06]**

**RIN 2120-AL00**

**Update to Investigative and Enforcement Procedures**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to revise the procedural rules governing Federal Aviation Administration investigations and enforcement actions. The proposed revisions include updates to statutory and regulatory references, updates to agency organizational structure, elimination of inconsistencies, clarification of ambiguity, increases in efficiency, and improved readability.

**DATES:** Send comments on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments identified by docket number FAA-2018-1051 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- **Mail:** Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, S.E., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

**Privacy:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**Docket:** Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this action regarding 14 CFR Part 13, subparts A through C, E, and F, contact Jessica E. Kabaz-Gomez, Office of the Chief Counsel, AGC-300, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-7395; email [Jessica.Kabaz-Gomez@faa.gov](mailto:Jessica.Kabaz-Gomez@faa.gov), or Cole R. Milliard, Office of the Chief Counsel, AGC-300, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-3452; email [Cole.Milliard@faa.gov](mailto:Cole.Milliard@faa.gov). For questions concerning this action regarding 14 CFR part 13, subpart D, contact John A. Dietrich, Office of the Chief Counsel, FAA Office of Adjudication, AGC-70, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-3433; email [John.A.Dietrich@faa.gov](mailto:John.A.Dietrich@faa.gov). For questions concerning this action regarding 14 CFR part 13, subpart G, contact Vicki S. Leemon,

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### **Authority for This Rulemaking**

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. The

Administrator has authority to issue regulations and procedure necessary for safety in air commerce and national security under 49 U.S.C. 44701(a)(5). The Administrator also has authority to issue regulations he considers necessary to carry out Subtitle VII, Part A of title 49 under 49 U.S.C. 40113(a).

This proposed rulemaking also relies on the authority of numerous other statutes because it prescribes procedures and other rules covering a wide variety of enforcement actions. Generally, it relies on the duties and powers delegated to the Administrator of the FAA under 49 CFR 1.83, including those described in 49 U.S.C. 40101 related to aviation. It also relies on the power of the Administrator to conduct investigations; prescribe regulations, standards, and procedures; and issue orders per 49 U.S.C. 40113-40114. Procedures and other requirements governing investigations, enforcement, complaints of violations, service, evidence, regulations and orders, and judicial review are found in 49 U.S.C. 46101-46110. Section 6002 of title 18 U.S.C. deals with immunity for witnesses in FAA formal investigations (see current and proposed 14 CFR 13.119).

The Administrator's duties and powers related to aviation safety in 49 U.S.C. 44701, and the authority of the Administrator to issue, amend, modify, suspend, and revoke certificates per 49 U.S.C. 44702-44703, 44709-44710, 44724, and 46111 also provide authority for this rulemaking. The rulemaking further relies on the Administrator's power to impose and collect civil penalties under 49 U.S.C. 46301.

The Administrator's powers with respect to aircraft maintenance (49 U.S.C. 44713, 44725), aircraft registration (49 U.S.C. 44103-44106), aircraft noise levels (49 U.S.C. 47531-47532), airports (49 U.S.C. 47106, 47107, 47111, 47122, and 47306), and hazardous materials (49 U.S.C. 5121-5124) are also part of the authority for this rulemaking. There is authority regarding the special aircraft jurisdiction of the United States, which includes certain aircraft in,

of, and connected to the United States. This jurisdiction includes provisions forbidding aircraft piracy, interference with flight crew, and carrying weapons or explosives on aircraft (49 U.S.C. 46501-46502 and 46504-46507). These authorities prescribe the standards that are enforced via the procedures provided in part 13.

## **I. Overview of the Proposed Rule**

This rulemaking would revise subparts A through G of part 13, which provide the procedural rules governing investigations and enforcement actions taken by the FAA. It would update statutory and regulatory references, eliminate inconsistencies, clarify ambiguity, increase efficiency, and improve readability. The agency is not proposing substantive amendments to subpart B, which addresses administrative actions or to subpart F, which governs formal fact-finding investigations under orders of investigation. The proposal does, however, include substantive amendments to subparts A, C, D, E, and G.

Subpart A addresses the FAA's investigative procedures. A proposed amendment to § 13.1 would add a re-delegation provision applicable to the whole of part 13. The FAA would remove current § 13.5(e), which addresses complaints filed against members of the armed services, to align with the proposed removal of current § 13.21. Additionally, § 13.5(e) would include a proposed definition for the date of service of a written answer to a complaint.

Subpart C addresses legal enforcement actions. Proposed amendments would provide a new emergency procedure allowing for an expedited administrative appeal process for when a notice is issued under 14 CFR 13.20(d) simultaneously with the Administrator's issuance of a temporary emergency order under 49 U.S.C. 40113 and 46105(c). The required elements of consent orders provided in § 13.13 would be amended to include a withdrawal of all requests for hearing or appeals in any forum as well as an express waiver of attorney's fees and costs. The rule would also amend § 13.17(a) to replace the term "operator" with "the individual

commanding the aircraft” to align with the underlying statute. Finally, the rule would remove § 13.29 pertaining to FAA enforcement procedures against individuals who present dangerous or deadly weapons for screening at airports or in checked baggage, as these proceedings are now under the Transportation Security Administration’s (TSA) authority.

Current subpart D provides the rules of practice applicable to FAA hearings involving legal enforcement actions pertaining to certain FAA-issued certificates, hazardous materials violations by any person, and other types of enforcement actions. This proposal would amend the applicability section of subpart D such that it would no longer apply to hearings for emergency orders of compliance issued under the Hazardous Materials Transportation Act (HMTA), because the procedures for this process are now provided by 49 CFR part 109, Department of Transportation, Hazardous Materials Procedural Regulations.

Additional amendments to subpart D would recognize the role and function of the FAA’s Office of Adjudication, and provide for the use of alternative dispute resolution (ADR) procedures. The proposed rule would consolidate sections relating to filing and service; update addresses; allow for filing and service by fax and email; clarify the discovery process including a modification to the subpoena rule; and consolidate and incorporate the appeal procedures stated in other subparts of part 13 into subpart D. Finally, a new provision would be added to subpart D at § 13.67 to provide an expedited review process for the subjects of emergency orders to which § 13.20 applies.

Subpart E provides for orders of compliance under the Hazardous Materials Transportation Act. Proposed amendments would harmonize procedures associated with notices of proposed orders of compliance and consent orders issued under subpart E with procedures for non-hazardous material notices and orders in subpart C. The rule would also move subpart D-related provisions regarding rules of practice in hearings into subpart D, and would update

procedures that have been superseded by subsequent amendments to the hazardous material (hazmat) statutes. Finally, a new cross-reference to the procedures in 49 CFR part 109, subpart C applicable to hazmat emergency orders issued by all DOT modes would be added.

Subpart G provides the rules of practice in FAA civil penalty actions. Just as with subpart D, proposed amendments to subpart G would include recognition of the FAA's Office of Adjudication, the use of mediation as an ADR procedure, and the addition of fax and email for filing and service. The rule would eliminate the current provision that provides five additional days in which to act or respond after service by mail. The FAA also proposes codifying the current practice of treating timely petitions for reconsideration of administrative law judge (ALJ) initial decisions as appeals to the FAA decisionmaker. Additionally, this proposal would require a party applying for a subpoena to make a showing of the general relevance and reasonable scope of the evidence sought by the subpoena. Other proposed changes would codify existing practices and create consistency within subpart G.

The FAA concludes that this proposed rule is a minimal cost rule based on the potential for minimal costs and minimal cost savings.

## **II. Background**

### **A. Statement of the Problem**

The majority of the rules in part 13 were last amended a decade or more ago. Since then, there have been a number of statutory, organizational, and technological changes such that part 13 requires updating. The last rulemaking affecting part 13 was published in 2014 and added informal conference procedures to § 13.20. Orders of Compliance, Cease and Desist Orders, Orders of Denial, and Other Orders, 79 FR 46964, August 12, 2014. Over the last two decades there have been a number of changes and updates to the statutes cited in part 13, but the

majority of these statutory references have not been updated. This rulemaking would update these statutory references to ensure that regulated parties have current and accurate information regarding the FAA's statutory authority.

The last rulemaking that amended part 13 for organizational updates was published in 2005. Rules of Practice in FAA Civil Penalty Actions, 70 FR 8236, February 18, 2005. Since then the FAA's Office of the Chief Counsel has undergone various organizational changes that are not reflected in part 13. Updates are necessary to reflect revised position titles and the creation of new offices within the Office of the Chief Counsel. For example, the FAA's Litigation Division was recently reorganized and the advisory function in civil penalty matters was transferred from the Assistant Chief Counsel for Litigation to the Director of the newly created Office of Adjudication. The Office of the Chief Counsel also has new deputy chief counsel positions: Principal Deputy Chief Counsel, Deputy Chief Counsel for Business Operations, and Deputy Chief Counsel for Employment Law, Litigation, and Administration. Additionally, the following position titles referenced throughout part 13 no longer exist: the Deputy Chief Counsel for Operations, the Deputy Chief Counsel for Policy and Adjudication, and the Deputy Chief Counsel for Europe, Africa and the Middle East Area Office. Proposed amendments would reflect these organizational changes to ensure that regulatory references to separation of functions, delegations of authority, and service and filing address information reflect the current structure of the Office of the Chief Counsel.

Additionally, many provisions in part 13 are antiquated. For example, fax and electronic filing, which have been adopted by most courts and by many administrative bodies, are not provided for in FAA administrative proceedings under part 13. Adoption of fax and email filing and service provisions in this rulemaking would make these administrative proceedings more efficient, expeditious, and cost-effective.

Similarly, there is wide-spread growth in federal courts and agencies' use of ADR as a cost-effective and time-efficient option for resolving matters or narrowing issues. However, ADR is not currently mentioned as an option for resolving enforcement matters under part 13. Under this proposal, regulated persons would have the opportunity to resolve matters or narrow issues in subparts D and G proceedings in an informal and cost-effective manner through ADR.

In some instances, the rules do not adequately capture procedures and practices in part 13 that have evolved or been refined since the rules were last amended. For example, in civil penalty proceedings the practice of filing documents with the FAA Hearing Docket and also serving the ALJ is generally required by ALJ prehearing orders. Serving the ALJ with documents, however, is not currently reflected in the part 13 rules. Additionally, in civil penalty proceedings, the FAA decisionmaker has treated motions for reconsideration of an ALJ's initial decision, order dismissing a complaint, order dismissing a request for hearing, or order dismissing a request for hearing and answer as notices of appeal to the FAA decisionmaker. This practice is not currently addressed in the part 13 rules. Codification and clarification of these current practices would help ensure the public is on notice of such developments.

The FAA proposes adding a new administrative appeal process for emergency orders to which § 13.20 applies. Through this process, the Administrator's interest in responding to a condition that poses an immediate threat to public safety would be balanced with the interest of subjects of these emergency orders in a meaningful post-deprivation administrative process. Currently, the only recourse for litigating such an order is a direct appeal under 49 U.S.C. 46110 to a U.S. court of appeals, which means that the subject of such an order is not afforded an opportunity to develop a record through the administrative process before court of appeals review. This could have negative consequences such as a remand of the matter to the agency to

develop the record, resulting in further delay, or a court of appeals decision on an inadequately developed record.

The FAA proposes amending part 13, subparts C and D, to provide an opportunity for an expedited administrative hearing before a Hearing Officer followed by an expedited appeal to the FAA decisionmaker through the issuance of a notice of proposed action that would allow for such process simultaneously with a time-limited emergency order for the matter. This process would be consistent with the Administrator's existing authority to issue indefinite emergency orders of suspension as well as the Administrator's existing authority to issue notices of proposed action.

Finally, the piecemeal and siloed development of the part 13 enforcement procedures and rules of practice in agency enforcement proceedings since 1979 has resulted in a lack of uniformity across the various rules and subparts in part 13. Many of the proposed amendments are intended to harmonize the rules of practice in agency enforcement proceedings. Other amendments would update, reword, and reorganize provisions. These changes are intended to eliminate the potential for confusion, for practitioners' ease of use, and to improve the rules' readability for regulated persons.

#### B. History

The FAA's investigative and enforcement procedures in part 13 were codified on November 5, 1979. The procedures developed unsystematically throughout the 1980s and 1990s, with piecemeal revisions to the various subparts in part 13. Major amendments in 1988 included the broadening of the investigative and enforcement procedures to airport-related actions and the development of detailed procedures for statutorily required on-the-record hearings in civil penalty actions. In the early 1990s the civil penalty provisions were revised to incorporate procedural changes made by the aviation community and the Committee on

Adjudication of the Administrative Conference of the United States, update the designation of advisors to the FAA decisionmaker, and test a program recommended by the Vice President's National Performance Review designed to streamline the procedures used to process certain civil penalty enforcement actions. In the latter half of the 1990s, part 13 was amended to update statutory references and delegations of authority in the rules, and to reflect organizational changes that occurred in the agency.

Most of the part 13 revisions made over the last two decades have continued to focus on the civil penalty assessment procedures and rules of practice in FAA civil penalty actions contained in subparts C and G of part 13. In 2004, part 13 was amended to reflect the National Transportation Safety Board's (NTSB) new jurisdiction to review the FAA's administrative civil penalty actions against individuals acting as pilots, flight engineers, mechanics, or repairmen. In 2006, part 13 was amended again to update the procedural regulations governing the agency's administrative assessment of civil penalties for violations of certain provisions of the Federal aviation and hazardous materials statutes to reflect statutory updates.

The latest amendments to part 13, not including statutorily mandated civil penalty inflation adjustments, were codified in 2014. The revisions added fairness and additional process in subpart C by providing recipients of notices of proposed orders of compliance, cease and desist orders, orders of denial, and other orders issued under § 13.20 with the opportunity to partake in an informal conference with an FAA attorney prior to the issuance of such orders.

### **III. Discussion of the Proposal**

The FAA proposes to revise subparts A through G of part 13. These provisions set forth procedural rules governing investigations and enforcement actions taken by the FAA.

The FAA proposes substantive amendments to subparts C, D, E, and G. In addition, the FAA proposes certain miscellaneous non-substantive changes throughout part 13. For example, the FAA proposes updating position title references throughout to reflect organizational changes in the Office of the Chief Counsel as well as updating office addresses and outdated statutory and regulatory references. Other proposed non-substantive amendments include changes to improve readability and clarity such as grammatical corrections, sentence restructuring, section reorganization, topical consolidation of like requirements, and removal of redundant requirements.

A. SUBPART A—GENERAL AUTHORITY TO RE-DELEGATE AND INVESTIGATIVE PROCEDURES

Subpart A (current § 13.1 through 13.7) contains the regulations covering reports of violations made to the FAA, FAA powers and delegations in conducting investigations, formal complaints to the FAA regarding violations of FAA statutes or regulations, and the use of records required to be kept by FAA regulations in investigations. There are no substantive changes to current §§ 13.1 and 13.7.

Re-delegation (§ 13.1)

Current § 13.1 on reports of violations would be renumbered as § 13.2. The FAA would replace the requirements in current § 13.1 with a re-delegation provision applicable to the whole of part 13. Currently, delegation provisions are located throughout part 13 but do not mention existing re-delegation authority. The Administrator and the Chief Counsel may each re-delegate the authority they receive as well as authorize successive re-delegations of that authority.<sup>1</sup> The proposed amendment would explicitly state that this power to re-delegate exists.

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<sup>1</sup> 49 CFR 1.81a (Administrator); FAA Order 1150.154A, ¶ 7.b (Chief Counsel).

### Reports on violations (§ 13.2)

Proposed § 13.2 would contain the same requirements as current § 13.1. The FAA proposes revising this section by updating the statutory references and simplifying the language for readability.

### Investigations (general) (§ 13.3)

Section 13.3 addresses the Administrator's powers related to investigations. Current § 13.3(b) sets forth the delegation of the Administrator's investigatory authority. This language is unnecessarily complex. The FAA proposes new delegation language for § 13.3(b) that is easier to understand.

Proposed § 13.3(c) consolidates authority delegated to several counsel positions in current § 13.3(b) and (c) and changes the delegates to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement. This is consistent with changes in organization and responsibilities within the FAA since part 13 was last amended. Proposed § 13.3(c) also describes the authority granted by the statutes cited in current § 13.3(b) rather than citing the statute.

### Formal complaints (§ 13.5)

Under § 13.5, any person may submit a formal complaint to the FAA alleging that a person has violated an FAA-related statute, rule, regulation, or order.

Proposed revisions to § 13.5(b)(2) and (i) would update the mailing address and docket location to reflect the division within the Office of the Chief Counsel currently responsible for handling formal complaints.

Proposed § 13.5(d) would clarify the method of forwarding complaints by requiring the copies of complaints sent by the FAA to the subjects of complaints to be sent by certified mail.

The FAA proposes removing current § 13.5(e), which addresses complaints filed against members of the armed services as set forth in current § 13.21. This section is no longer necessary, as the FAA proposes to remove § 13.21. Proposed § 13.5(f) would clarify that it is optional for the subject of a formal complaint to submit an answer and clarify that the date of service of the complaint on a subject is the date of mailing. The current regulation could be read as mandating the filing of an answer. While an answer can be beneficial to both the subject of a complaint and the FAA as it considers a formal complaint, it is not the FAA's intent to require a subject to file an answer. Also, the current regulation does not define date of service. To prevent confusion, the FAA is proposing to define it as the date of mailing.

**B. SUBPART B—ADMINISTRATIVE ACTIONS**

Subpart B (current § 13.11) allows the Administrator to take administrative action rather than legal enforcement action if an investigation uncovers a violation or apparent violation. It also describes what constitutes an administrative action. The FAA proposes updating the statutory references and simplifying the language for readability, without changing the requirements of this section.

**C. SUBPART C—LEGAL ENFORCEMENT ACTIONS**

Subpart C (current § 13.13 through 13.29) describes the Administrator's authority to take different kinds of legal enforcement actions, including certificate actions, civil penalty actions, orders of compliance, cease and desist orders, aircraft seizures, and injunctions. It also explains how the different types of legal enforcement actions are initiated as well as how persons subject to those actions can respond to them.

The FAA proposes several substantive changes to this subpart. Primarily, unnecessary restatements of the Administrator's statutory authority to take legal enforcement action would be

removed and new procedures would be added in § 13.20 to allow for an administrative appeal of emergency orders covered by that section.

#### Consent orders (§ 13.13)

Section 13.13 allows for the resolution of any legal enforcement action mentioned in subpart C through a consent order.

In § 13.13(a), the FAA proposes updating the text to identify who specifically may issue a consent order, consistent with the reorganization of the Office of the Chief Counsel. Current § 13.13(a) states that a consent order may be issued “at any time before the issuance of an order under this subpart.” Proposed § 13.13(a) would remove this text to make clear that consent orders may be issued at any time, not just before an order is issued. This change would allow for greater flexibility for both the FAA and opposing parties when settling cases through consent orders.

A person who may be subject to legal enforcement action can propose a consent order, but it must contain the items listed in § 13.13(b). The existing introductory text is passive as to who can propose a consent order and would be rewritten to clarify that it is the person subject to the notice. As part of this clarification, existing § 13.13(b)(1) would be removed as it is duplicative of what is in the introductory text and current § 13.13(b)(2) would be redesignated as § 13.13(b)(1). The proposed rule would add an express waiver of attorney’s fees and costs as an item that must be included with a proposed consent order. The proposed rule would also expand current § 13.13(c) (integrated in § 13.13(b)(5) as part of the proposal) to require withdrawal of any request for hearing or appeal in any forum; the current rule only mentions hearings under subpart D of part 13. This expansion is consistent with long-standing FAA practice that when settling a case (such as through a consent order) all requests for hearing or appeals in that case must be withdrawn, regardless of the forum.

Section 13.13(b)(2) (redesignated as § 13.13(b)(2)) would be amended to clarify that the waiver of review that must be in a proposed consent order covers any form of legal review including administrative processes as well as judicial review in Federal court.

Finally, § 13.13(b)(4) would be amended to reflect that a consent order may be issued after an order by stating that a notice or order may be incorporated by reference into the consent order and used to construe the consent order if it was issued prior to the consent order.

Civil penalties: General (§ 13.14)

Section 13.14 lays out the authorities under which a person may be subject to a civil penalty. These authorities include not only the statutes themselves, but also any rule, regulation, or order promulgated under those statutes. Finally, it points to the minimum and maximum civil penalty amounts in subpart H of part 13 and mentions that they are periodically adjusted for inflation. The FAA proposes to delete this section because it is an unnecessary restatement of statutory authority. Also, current paragraph (c) is unnecessary and would be removed because subpart H of part 13 addresses the maximum and minimum civil penalties and inflation adjustments in detail.

Civil penalties: Other than by administrative assessment (§ 13.15)

When the FAA seeks to assess a civil penalty but the amount in controversy exceeds the statutory limits of its authority to administratively assess a penalty, § 13.15 applies. Under this section, the FAA sends a civil penalty letter to the person charged with a violation. The letter describes the charges, applicable law, and an amount the FAA would accept in compromise of the action.

The proposal includes amendments to § 13.15(b) and (c)(1) to reflect the current organizational structure of the Office of the Chief Counsel. Additionally, the proposal would

eliminate references in § 13.15(b) to December 12, 2003 as obsolete because the statute of limitations for imposing a civil penalty for a violation before December 12, 2003 has run.<sup>2</sup>

The proposal would combine paragraphs (c)(2), (3), and (4) into new paragraph (c)(2), which would identify the options for responding to a civil penalty letter and adding the option to request an informal conference to discuss the case. Proposed § 13.15(c)(2)(i) would also allow a person to submit an electronic payment in the amount offered by the Administrator in the civil penalty letter, to reflect the FAA's current practice. The option in current § 13.15(c)(3) and (4) to submit a certified check or money order in an amount other than that proposed in the civil penalty letter as a compromise offer would be removed, as this option is not required by statute, was rarely used, and was an inefficient means of settling cases.

Civil Penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations (§ 13.16)

Currently, section 13.16 addresses administrative assessments of civil penalties against persons who are not acting as a pilot, flight engineer, mechanic, or repairman for violations cited in the first sentence of 49 U.S.C. 46301(d)(2), or in 49 U.S.C. 47531, or any implementing rule or order. It also covers civil penalties against all persons who violate hazmat laws, i.e., 49 U.S.C. chapter 51 or a rule or order issued under that chapter.

The FAA proposes the following updates to § 13.16:

- Update all regulatory and statutory cross references.
- Remove obsolete references to December 12, 2003 from § 13.16(b) for the same reasons as the removal of this date from § 13.15.

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<sup>2</sup> 28 U.S.C. 2462.

- Move the delegation of authority, currently in § 13.16(e), to § 13.16(d) and update the delegation to reflect reorganization of the Office of the Chief Counsel. Consistent with the existing delegation of authority in § 13.16, the Chief Counsel would not be included because the Chief Counsel advises the Administrator when the Administrator acts as the FAA decisionmaker reviewing civil penalty actions under this section and § 13.18 on appeal.
- Redesignate § 13.16(d), describing when an order assessing a civil penalty may be issued and what counts as an order assessing a civil penalty, as § 13.16(e) without substantive change.
- Amend § 13.16(g) to eliminate the requirement for a company or corporation to designate in writing an agent to receive a final notice of proposed civil penalty because this option is provided for in proposed (and current) § 13.16(f) for notices of proposed civil penalty. A notice of proposed civil penalty would always be issued before a final notice of proposed civil penalty, so including it in both § 13.16(f) and (g) is unnecessary duplication.
- Remove the last sentence of current § 13.16(i), as well as most of current § 13.16(j), as the issues discussed there would be addressed in proposed subpart G.
- Redesignate current § 13.16(k) as § 13.16(l) with revisions to clarify how a person could pay a civil penalty as well as the due date for the payment, along with adding an option for electronic payment.
- Redesignate current § 13.16(l) and (m) as § 13.16(m) and (k), respectively.
- Delete the reference to 49 U.S.C. 46303(b) from § 13.16(n) as that paragraph falls under the authority of the Secretary of Homeland Security.

### Seizure of aircraft (§ 13.17)

Currently, § 13.17 describes how the Administrator exercises his authority to seize aircraft under 49 U.S.C. 46304. The FAA proposes two amendments to this section. In § 13.17(a), “operator” would be changed to “the individual commanding the aircraft” because the latter phrase is found in the statute which provides the authority for § 13.17 and the term “operator” appears to expand the agency’s authority in this area beyond that intended by the statute.

“Operate” is defined in 14 CFR 1.1 as to “use, cause to use, or authorize to use aircraft, for the purpose . . . of air navigation including the piloting of aircraft.” Thus an “operator” under this definition includes persons other than individuals, e.g., an air carrier. In practice, the FAA applies § 13.17 consistent with the more narrowly construed statutory authority for aircraft seizure, limiting the scope of the provision to individuals. Accordingly, this amendment would harmonize the regulatory language with both the statute and FAA practice.

Section 13.17(c)(4)(ii) would be amended to make clear that an aircraft may be seized for administratively assessed civil penalties, not only those imposed by a Federal court.

### Civil penalties: Administrative assessment against an individual acting as a pilot, flight engineer, mechanic, or repairman (§ 13.18)

Section 13.18 governs civil penalties administratively assessed against individuals acting as a pilot, flight engineer, mechanic, or repairman. The agency proposes the following amendments:

The delegation of authority in § 13.18(c) would be amended to reflect the current organizational structure of the Office of the Chief Counsel. Additionally, § 13.18(d) would be amended to include more detail regarding the options for responding to a notice, consistent with proposed § 13.16(f). Section 13.18(h) would also be amended to specify what constitutes a final

decision or order so as to correspond with the analogous judicial review provision in § 13.16(k). In the same way, § 13.18(i) would be amended to specify when and how a compromise may proceed and thus match the analogous compromise provision in proposed § 13.16(n).

Certificate actions appealable to the National Transportation Safety Board (§ 13.19)

Section § 13.19 describes the authority under which the Administrator may take certificate action. It also describes when and how the Administrator must provide notice before issuing an order under this authority. The proposed rule would remove unnecessary references to the FAA's statutory authority to act while clarifying how persons can respond to a notice or appeal an order. Statutory citations need not be listed in the regulatory text for the agency to exercise its authority under such statutes. However, § 13.19 would retain descriptions of the FAA's authority to issue immediately effective (i.e., emergency) orders.

Proposed § 13.19(a) contains a general description of the Administrator's authority to take certificate action, which provides the basis for the regulations pertaining to the issuance of notices and orders that make up the rest of this section.

The content of a notice of certificate action and the ways a person may respond to a notice for non-emergency actions are contained in proposed § 13.19(b). It retains the substance of current § 13.19(c) and the floating paragraph that follows as to these areas, but has been restructured and reworded for consistency with similar provisions, e.g., current (and proposed) §§ 13.18(d) and 13.16(f). This restructuring would also make new § 13.19(b) easier to understand than current § 13.19(c) and the floating paragraph that follows, which are both difficult to parse and difficult to relate to the rest of current § 13.19(c).

Proposed § 13.19(b) also resolves a conflict between current § 13.19(d) and 49 U.S.C. 44106. Current § 13.19(d) appears to exclude all orders affecting a certificate of registration, including orders issued under 44106, from being appealed to the NTSB. However, 49 U.S.C.

44106 explicitly provides for appeals on the merits of 44106 actions to the NTSB. Therefore, proposed § 13.19(b)(2)(iv) would clarify that orders issued under 44106 are appealable to the NTSB.

The FAA proposes removing current § 13.19(d) because it unnecessarily repeats statutory authority on appealing applicable orders on the merits as well as when their effectiveness is stayed on appeal (49 U.S.C. 44709 and 44106).

Proposed § 13.19(c) states that a person affected by the immediate effectiveness of an emergency order issued under 49 U.S.C. 44709 may petition the NTSB for review of the underlying emergency determination. The appeal of an emergency determination is mentioned in the NTSB's rules of practice, but is not currently mentioned in part 13. It is being added so that persons affected by emergency orders under 44709 are aware they may seek review of the emergency determination separately from the merits of the order.

Proposed § 13.19(d) states the three bases for an emergency order where the determination that an emergency exists cannot be appealed to the NTSB, even though the merits of the emergency order can be appealed to the NTSB. These three bases correspond to actions taken under 49 U.S.C. 44710, 44106, and 44726, respectively. In these cases, a separate appeal of the emergency determination must be made to a U.S. court of appeals.

#### Orders of compliance, cease and desist orders, orders of denial, and other orders (§ 13.20)

Orders of compliance, cease and desist orders, orders of denial, and certain other orders have a different notice and appeal process than what is outlined in § 13.19; those orders are addressed in § 13.20.

Proposed § 13.20(a) would reorganize current § 13.20(a), update the statutory references to cite title 49, and make clear to which orders § 13.20 does and does not apply for purposes of providing FAA administrative hearings under subpart D. For example, § 13.20(a)(4) would

make clear that orders issued under 49 U.S.C. 44105 fall under § 13.20 process. Proposed § 13.20(a)(5) would serve as a catch-all for any other orders where administrative process can be but is not otherwise explicitly provided.

Proposed § 13.20(b) would incorporate the requirement in current § 13.20(b) to provide notice in non-emergency cases (i.e., cases where the order is not immediately effective) as well as specifically identify which procedures govern non-emergency versus emergency cases.

Proposed § 13.20(c) would integrate current § 13.20(c), (d), and (e) regarding notice of an action, deadline and options for responding to a notice (including requesting a hearing), and the consequences of failing to timely request a hearing.

The FAA also proposes adding an additional response option in § 13.20(c)(ii) allowing a recipient of a notice to agree to the issuance of an order as proposed in the notice of proposed action, with the understanding that the person choosing this option waives any right to contest or appeal the agreed-upon order issued under this option in any administrative or judicial forum. This parallels similar provisions in §§ 13.16(f)(1), 13.16(g)(2)(ii), 13.18(d)(1), and 13.19(b)(2)(i) describing what happens if a recipient accepts the civil penalty or other sanction proposed in a notice. It also makes clear that by agreeing to the order, the recipient is waiving his right to appeal it.

The FAA additionally proposes adding an expedited administrative process for the subjects of orders to which § 13.20 applies in proposed §§ 13.20(d) and 13.67. Currently, part 13 does not provide for an expedited administrative process for orders referenced in § 13.20 where the Administrator finds that an emergency exists and makes an order immediately effective.

The Administrator is authorized to issue orders to carry out the FAA's safety mandate under 49 U.S.C. 40113(a), and to order the immediately effectiveness of such orders under 49

U.S.C. 46105(c) when an emergency exists. Under 49 U.S.C. 46110, U.S. courts of appeals have exclusive jurisdiction over appeals of orders issued by the Administrator unless there is an administrative process that by statute requires exhaustion, as in 49 U.S.C. 44703, 44709, 44710, 44726, and 46111. Accordingly, subjects of some final orders do not have an opportunity to have the matter administratively adjudicated before court review.

The Administrator's use of emergency authority is critical when conditions require the cessation of conduct that poses an immediate threat to public safety. Due to the absence of administrative adjudication provisions for emergency orders to which § 13.20 applies, the subjects of such orders do not currently have the opportunity to develop a record through the administrative process, including the opportunity to conduct discovery, offer evidence, present testimony, and cross-examine witnesses. The record for court review would generally consist of materials compiled by the FAA as the basis for the FAA's emergency action. Courts of appeals have no predictable mechanism for a petitioner to submit evidence or testimony to add to the record. While a court of appeals could remand a case to the FAA for proceedings to further develop the record in a case, part 13 does not currently define what those administrative proceedings would entail. Filing a petition for review only to have it remanded to the agency is an inefficient use of both the petitioner's and the agency's time and money. Further, a court's review of an underdeveloped record necessitating a remand is an unnecessary expenditure of resources that can be avoided if the agency provides an opportunity for the parties to develop the record during less costly and more efficient informal administrative proceedings. In fact, the proposed procedures could provide an expeditious resolution of a matter that may obviate court review.

The proposed emergency procedure in § 13.20(d), and corresponding process for expedited hearings in § 13.67, balance the Administrator's interest in responding to a condition

that poses an immediate threat to public safety through the agency's emergency authority and the interest of a subject of an emergency order to which § 13.20 applies in a meaningful post-deprivation administrative process. Section 13.20(d) would provide for the issuance of a time-limited (or temporary) emergency order simultaneously with a notice of proposed action. Both the temporary emergency order and notice of proposed action would set forth the same charges forming the basis for the action. The order would expire 80 days after the date of its issuance, but the notice would not be time-limited.

The subject of the temporary emergency order could seek court review of the order under 49 U.S.C. 46110. As a practical matter, the temporary emergency order is akin to an immediately effective injunction ceasing conduct that poses an immediate safety threat, and an appeal from the order would likely consist of a petition to stay the effectiveness of the order given its short duration. Meanwhile, the subject of the action could request expedited administrative review of the notice, which would include a hearing before a Hearing Officer and an appeal of the Hearing Officer's decision to the Administrator governed by procedures in proposed § 13.67, which sets forth time limits allowing for the completion of the administrative process before the expiration of the temporary emergency order.

The process proposed in §§ 13.20(d) and 13.67 is consistent with the Administrator's existing authority and practice. The Administrator issues emergency orders under 49 U.S.C. 46105(c), including indefinite emergency orders to address a person's failure to comply with a statutory or regulatory requirement or cooperate with the FAA. The Administrator also has authority to seek mandatory or prohibitive injunctive relief in accordance with the procedures at 14 CFR 13.25. Further, the Administrator issues notices of proposed action and provides administrative processes related to such notices. While proposed § 13.20(d) and § 13.67 provide a new expedited administrative review for matters to which § 13.20 applies, expedited subpart D

proceedings are not new, as current subpart E uses subpart D procedures for appeals of hazardous materials emergency orders of compliance issued under existing § 13.81(a).<sup>3</sup> Accordingly, these new provisions create no novel issues. Rather, these new provisions use existing processes – albeit modified – to achieve the mutually beneficial results previously discussed.

Finally, proposed § 13.20(e) updates the delegation of the authority of the Administrator to reflect the current organizational structure of the Office of the Chief Counsel.

Current § 13.20 (f) through (m) would be removed, as their subject matter would be moved to proposed subpart D, which would govern hearings requested under § 13.20.

#### Military personnel (§ 13.21)

Section 13.21 addresses violations by members of the Armed Forces or civilian employees of the Department of Defense. This provision was intended to reflect the self-implementing language in 49 U.S.C. 46101(b). Section 46101(b) requires the Secretary of Transportation or the Administrator to refer a complaint against a member of the armed forces to the Department of Defense. It further requires the Department of Defense to provide information to the Secretary of Transportation or the Administrator regarding the action taken on the complaint no later than 90 days after receiving the complaint.

Currently, § 13.21 is an incomplete representation of section 46101(b) because the language in this section is not consistent with the statute and it does not include the requirement for the Department of Defense to provide information on the referred complaint. However, given that this provision is not necessary to implement the statutory requirements in section 46101(b) and does not include any requirements on regulated persons, the agency proposes to remove this

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<sup>3</sup> This rulemaking proposes removing the current regulations regarding appeals of hazmat emergency orders of compliance in subpart E because 49 CFR part 109 now governs them. *See* discussion of proposed § 13.81(a).

section, thereby eliminating the inconsistency between the regulation and the statute. Removing this section from the FAA's regulations does not affect the substance of section 46101(b), which remains in effect. .

#### Criminal penalties (§ 13.23)

Section 13.23 identifies criminal penalties for statutory violations and the method by which FAA employees report criminal violations. The FAA proposes to remove this section because it does not impose any requirements on regulated persons. The method by which FAA employees report criminal violations is appropriately addressed through internal agency procedures.

#### Injunctions (§ 13.25)

Injunctions are addressed in § 13.25. The FAA proposes to remove this section as unnecessary. The authority to seek an injunction is already provided by statute. The FAA's process for seeking an injunction is a matter best addressed through internal agency procedures

#### Final order of Hearing Officer in certificate of aircraft registration proceedings (§ 13.27)

As final orders of Hearing Officers regarding aircraft registration proceedings would be addressed in proposed subpart D, § 13.27 would be removed and reserved.

#### Civil penalties: Streamlined enforcement procedures for certain security violations (§ 13.29)

The FAA proposes to remove and reserve § 13.29 because proceedings for security violations currently fall under the TSA's authority.

### D. SUBPART D—RULES OF PRACTICE FOR FAA HEARINGS

Subpart D (current §§ 13.31 through 13.63) currently provides the rules of practice applicable to FAA hearings requested in accordance with §§ 13.19(c)(5), 13.20(c)(3), 13.20(d), 13.75(a)(2), 13.75(b), or 13.81(e). This rulemaking proposes to consolidate, reorganize, and update the rules of practice applicable to subpart D hearings.

### Applicability (§ 13.31)

Section 13.31 currently uses cross references within part 13 to explain when subpart D hearings may be requested. The FAA proposes removing the cross-reference to 13.81(e) to reflect that subpart D hearings are no longer an option in appeals of hazmat emergency orders issued under current § 13.81. The formal hearing requirements in 49 CFR part 109, published in 2011, superseded the option for subpart D hearings in such matters.<sup>4</sup> Additionally, the amendment would remove the cross-reference to § 13.19(c)(5), as the contents of this provision would be moved to proposed § 13.20. The current cross-references to § 13.20(c) and (d) would be streamlined to cite § 13.20, as would the current cross-references to § 13.75(a)(2) and (b), to cite § 13.75. Subpart D hearings, therefore, would be limited to review of orders as described in proposed § 13.20, and non-emergency hazmat orders of compliance described in proposed § 13.73.

Further, to clarify the current applicability of the subpart and to reflect organizational changes, as set forth in FAA Order GC 1100.170, effective January 3, 2017 (available at [http://www.faa.gov/regulations\\_policies/orders\\_notices/](http://www.faa.gov/regulations_policies/orders_notices/)), the FAA proposes to state expressly that hearings under subpart D would be considered informal adjudications, and that the FAA's Office of Adjudication would provide subpart D proceedings.

### Parties, representatives, and notice of appearance (§ 13.33)

Current § 13.33 provides that any party may appear and be heard in person or by an attorney. The provision does not define any relevant terms pertaining to appearances or representation in subpart D hearings, and it does not provide the process by which a representative of a party enters an appearance.

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<sup>4</sup> See 49 U.S.C. 5121(d)(3) (requiring formal review procedures under 5 U.S.C. 554) and the final rule implementing the requirements, Hazardous Materials: Enhanced Enforcement Authority Procedures, 76 FR 11570, March 2, 2011.

The FAA proposes amending § 13.33 to identify and define the parties to a proceeding in order to ensure clarity in subsequent sections. The FAA also proposes to provide a process for designating representatives, explaining that a party must file a notice of appearance that includes the representative's name and contact information, and that the notice may be incorporated into an initial filing, but subsequent notices by additional representatives or substitutes must be filed independently. Changes to representation do not require filing an amended pleading. Instead, a party may file a notice of appearance with the FAA Hearing Docket and serve it on the other parties.

#### Request for hearing, complaint, and answer (§ 13.35)

Section 13.35 presently provides the process for filing an initial request for hearing and pleading documents with the FAA Hearing Docket, including that a party must file an answer with the request for hearing, prior to the filing of the complaint. The order of these initial filing requirements distinguishes current subpart D procedures from those of other administrative bodies that the FAA practices before, including the NTSB (49 CFR part 821), as well as initial pleading procedures before Federal courts. In those forums, the filing of an answer occurs after the filing of a complaint.

The FAA proposes to align the subpart D initial pleading processes with more traditional initial pleading processes that are also employed by the NTSB by removing the requirement in § 13.35(b) and (c) that an answer must be filed concurrently with the request for hearing. Instead, proposed § 13.35(b) would require the FAA to file a complaint within 20 days after an affected party serves the FAA with a copy of a request for hearing. Proposed § 13.35(c) would require the party who requested the hearing to file an answer to the complaint within 30 days after service of the complaint. The proposed amendment, consistent with Rule 8 of the Federal

Rules of Civil Procedure and § 13.209(e) in subpart G, would specify that all allegations in the complaint not specifically denied in the answer are deemed admitted.

The proposal would also reorganize subpart D procedures by moving the filing and service information currently found in § 13.35 to § 13.43, which provides general filing and service instructions for all documents. The FAA also proposes consolidating the instructions for filing a request for hearing from two paragraphs ((a) and (b)), to one paragraph (a), without substantive change.

#### Hearing Officer: Assignment and powers (§ 13.37)

Section 13.37 currently provides a list of the Hearing Officer's powers without providing how or when a Hearing Officer is assigned. The proposed amendments to this section would provide how and when Hearing Officers are assigned, specifying that the Director of the Office of Adjudication would assign a Hearing Officer to preside over the matter as soon as practicable after the filing of a complaint. The proposed amendment would also clarify § 13.37(h) by explaining that in addition to regulating the course of a hearing, a Hearing Officer may generally regulate the course of proceedings, including but not limited to discovery, motions practice, imposition of sanctions, and the hearing, which is consistent with current practice. The proposed amendment to § 13.37(k) would specify that a Hearing Officer may issue protective orders governing the exchange and safekeeping of information otherwise protected by law, except that national security information<sup>5</sup> may not be disclosed under such an order. Proposed § 13.37(l) would address the remaining Hearing Officer's powers currently provided in § 13.37(k). Finally,

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<sup>5</sup> The term "national security information" in amended § 13.37(k) is interpreted consistently with existing executive orders governing this information. For example Executive Order 13526, 75 FR 707, 728-29, January 5, 2010, defines "national security" and "information" as any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, is produced by or for, or is under the control of the United States Government pertaining to the national defense or foreign relations of the United States.

the amendment would add § 13.37(m) explaining that a Hearing Officer may take any other action authorized in subpart D.

Separation of functions and prohibition on ex parte communications (§ 13.41)

The FAA proposes to add a new § 13.41, pertaining to separation of functions and ex parte communications. Proposed § 13.41 would ensure separation between the hearing and appellate functions in the Office of Adjudication by prohibiting a Hearing Officer from participating in any appeal to the Administrator, so as to instill public confidence in the process.

Proposed § 13.41 also establishes procedural safeguards against ex parte communications to ensure that decisions by the Hearing Officer and the Administrator are based on the agency record. However, an event scheduled with prior notice would not be considered a prohibited ex parte communication even if a party failed to appear, respond or participate, and would be permitted to proceed in the Hearing Officer's sole discretion. Further, proposed § 13.41(c) would provide that under subpart D appeals to the Administrator from a Hearing Officer's order, FAA attorneys representing the complainant are not permitted to advise the Administrator or engage in substantive ex parte communications with the Administrator or with the Administrator's advisors.

Service and filing of pleadings, motions, and documents (§ 13.43)

Currently, § 13.43 provides the service and filing rules for pleadings, motions, and other documents filed under subpart D. It does not, however, address service of requests for hearings nor does it provide the filing address for the FAA Hearing Docket. Additionally, § 13.43 only provides for service by personal delivery or mail.

Proposed § 13.43(b) would add the options of filing with the FAA Hearing Docket by fax or email. Filing in person, by expedited courier service, or by U.S. mail would continue as currently provided. Proposed § 13.43(c) would contain the physical addresses for filing

documents. It would also state that the email and fax number for the FAA Hearing Docket would be on the Office of Adjudication website.<sup>6</sup> Proposed § 13.43(d) would provide the number of originals or copies that must be filed depending on the method of service. Instructions for filing by email would be given in proposed § 13.43(e).

Proposed § 13.43(f) would reflect the permissible methods of service on parties. Service by personal delivery or mail would continue as currently provided. The amendment would permit service by email or fax, though email service would require the prior consent of the person to be served and allow consent to be withdrawn in writing.

Additionally, proposed § 13.43(g) would provide the certificate of service requirements currently in 13.43(c), as amended to address service by fax or email and the requirement that the certificate must be signed, describe the method of service, and state the date of service.

Finally, the proposed reorganization would move the “date of filing” and “date of service” definitions from paragraphs (d) and (e) to proposed paragraph (h). The proposal would further provide that the date of filing/service is determined depending on the method of filing/service used, which is consistent with common practice. If a document is filed/served by fax or email, the date of filing/service would be the date the email or fax is sent. If a document is filed/served by personal delivery or by expedited courier service, the date of filing/service would be the date that delivery is accomplished. If a document is mailed, the date of filing/service would be the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

#### Computation of time and extension of time (§ 13.44)

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<sup>6</sup> See Office of Adjudication website ([http://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/adjudication/](http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/)).

The FAA proposes moving the provisions currently in 13.44, describing how to compute time periods proscribed under subpart D and procedures for requesting extensions of time, to section 13.45. Section 13.44 would be removed and reserved for future use in order to follow the general numbering scheme proposed for subpart D.

#### Computation of time and extension of time (§ 13.45)

In place of current § 13.45, the FAA proposes adding the general computation of time provision and extension of time provision currently in § 13.44.

Proposed § 13.45(a) would contain the provision for computing time that is currently in § 13.44(a), removing extraneous language that is confusing, without any substantive change. The reference in current § 13.44(a) to “legal holiday for the FAA” would be updated in proposed § 13.45(a) to “Federal holiday” which has the same meaning, but is more easily understood by the general public.

Proposed § 13.45(b) and (c) would contain the requirements for requesting extensions of time previously provided in § 13.44(b).. The FAA proposes to amend these requirements to distinguish between extension requests that the parties agree on, and those they do not agree on, which are not distinguished in current § 13.44(b). This proposed distinction would decrease the burden on parties making joint requests for extensions or unopposed requests for extensions, by not requiring parties making those requests to show good cause for the extension to be granted. Proposed § 13.45(b) would provide that parties may agree to extend the time for filing any document required by this subpart, with the consent of: (1) the Director of the Office of Adjudication, prior to the designation of a Hearing Officer; (2) the Hearing Officer, prior to the filing of a notice of appeal; or (3) the Director of the Office of Adjudication, after the filing of a notice of appeal. Proposed § 13.45(c) would provide that if the parties do not agree, a party may

make a written request to extend the time for filing to the appropriate official listed in § 13.45(b), who could grant the request for good cause shown.

#### Withdrawal or amendment of the complaint, answer or other filings (§ 13.47)

Section 13.47 provides for withdrawal of the notice or a request for hearing. The proposed amendment to § 13.47 would retain the existing withdrawal provision and substitute “complainant” and “respondent” as defined in amended § 13.33 where appropriate, as well as substitute “complaint” for “notice of proposed action” to align with initial pleading changes in proposed § 13.35. The FAA proposes adding § 13.47(b), containing the provisions for amending the notice and answer from current § 13.45. It proposes amending the provision to replace unnecessary references to “his or her” with “its” and modifying the requirement for parties to file amended pleadings with the Hearing Officer so that all amendments are filed with the FAA Hearing Docket instead. This would align with the amended filing requirements proposed in § 13.43(b). The proposed amendment would also replace the reference to a notice of proposed action with a reference to a complaint, to align with initial pleading changes in proposed § 13.35.

#### Motions (§ 13.49)

Section 13.49 currently provides a list of motions that parties may file. The FAA proposes to revise § 13.49 to consolidate certain categories of motions to reduce redundancy, specifically address certain common motions that were previously not listed, provide additional information or clarity about motions currently listed, and to align motions practice with common practices permitted under the Federal Rules of Civil Procedure.

Sections 13.49(a) and (c) would be consolidated into proposed § 13.49(a)(1) and (2), allowing parties to file a motion to dismiss or a motion for a more definite statement in place of an answer, as is currently provided, with the addition that a respondent’s motion to dismiss may be based on other appropriate grounds not specifically listed.

In § 13.49(b), the FAA proposes to explicitly state that motions to dismiss a request for hearing could be based on jurisdiction, timeliness, or other appropriate grounds.

Proposed § 13.49(c) would address motions for decisions on the pleadings, currently called motions for judgment on the pleadings in § 13.49(d), and it would add an option to file motions for summary decision. The FAA proposes that parties file these motions in the manner provided by Rules 12 and 56, respectively, of the Federal Rules of Civil Procedure.

Proposed § 13.49(d) would provide for motions to strike, which are currently provided for in § 13.49(e). It would also add “redundant” matters as a basis for motions to strike, consistent with the Federal Rules of Civil Procedure.

Proposed § 13.49(e) would address motions to compel, which were previously addressed as motions for production of documents in § 13.49(f). This change is intended to align with the revised discovery rule in proposed § 13.53. The proposal would also remove the reference to Rule 34 of the Federal Rules of Civil Procedure. Additionally, the FAA would clarify that a party may file a motion to compel if the other party fails to timely produce requested discovery and the moving party certifies it has conferred in good faith with the other party in an attempt to obtain the requested discovery prior to filing the motion.

Section 13.49(f), as proposed, would permit a party to file motions for protective orders. It would also permit Hearing Officers to order information or testimony withheld from public disclosure if: such disclosure would be detrimental to aviation safety; the disclosure would not be in the public interest; or the information is not otherwise required to be made available to the public.

The FAA proposes removing the requirement to consolidate motions currently in § 13.49(g), and replacing this paragraph with a catch-all provision stating that any application for an order or ruling not otherwise provided for in subpart D would have to be made by motion.

Finally, § 13.49(h) would be amended to provide a party filing a response to a motion with 10 days to respond after service of the motion instead of 5 days. This amendment would provide a more reasonable length of time to permit the parties to prepare better-developed responses to motions, and create uniformity with subpart G motions practice. The amendment would also replace the term “answer” with “response,” as to avoid confusion with the pleading called an “answer” found in revised § 13.35(c).

#### Discovery (§ 13.53)

Section 13.53 currently provides that a party may take depositions in accordance with section 1004 of the Federal Aviation Act of 1958 (49 U.S.C. 1484, presently codified at 49 U.S.C. 46104) or Rule 26, Federal Rules of Civil Procedure. It does not address other means of discovery.

The FAA proposes amending § 13.53 by establishing the scope for discovery in subpart D hearings, setting relevant time limits and procedures for discovery, and clarifying that parties do not ordinarily file discovery requests and responses with the FAA Hearing Docket unless in support of a motion, offered for impeachment, or other permissible circumstances as approved by the Hearing Officer.

Proposed § 13.53(b) would provide the scope of discovery, modeled after Rule 26 of the Federal Rules of Civil Procedure, which provides that the scope is any matter that is not privileged and is relevant to any party’s claim or defense.

Proposed § 13.53(c) would provide for written discovery requests and set a 30-day time frame for responding to such requests. This time frame would be consistent with comparable discovery-related provisions in § 13.220(d), and Rules 33(b)(2) and 36(a)(3) of the Federal Rules of Civil Procedure.

Proposed § 13.53(d) would include the deposition provision currently in § 13.53, amended to remove the outdated statutory citation to 49 U.S.C. 1484, and to remove the reference to Rule 26 of the Federal Rules of Civil Procedure which only governs oral depositions. The FAA has the discretion to rely on its authority in section 49 U.S.C. 46104, as 46104(c) specifically provides how to give notice of and conduct depositions in proceedings or investigations by the Secretary of Transportation or the Administrator of the Federal Aviation Administration.

Finally, proposed § 13.53(e)(1) through (4) would provide that the Hearing Officer could limit the frequency and extent of discovery upon a party's showing that: (1) the discovery requested is cumulative or repetitious; (2) the discovery requested can be obtained from another less burdensome and more convenient source; (3) the party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or (4) the method or scope of discovery requested by the party is unduly burdensome or expensive. These limitations on discovery align with Rule 26(b) of the Federal Rules of Civil Procedure and they parallel the discovery limits in § 13.220(f).

#### Subpoenas and witness fees (§ 13.57)

Section 13.57, which governs subpoenas and witness fees, does not currently provide any deadlines for requesting subpoenas, or any process for quashing, modifying, or enforcing subpoenas. It does contain a provision that shifts the standard witness fee burden from the party requesting the appearance of the witness to the FAA when certain circumstances are met. The proposed amendments would address each of these items.

The FAA proposes amending § 13.57(a) to include deadlines for requesting subpoenas to ensure people receiving a subpoena have adequate notice. Specifically, the proposed rule would

require parties requesting subpoenas to file subpoena requests 15 days before the scheduled deposition or 30 days before the scheduled hearing, barring good cause shown.

The FAA proposes amending § 13.57(b) by adding a reference to amended § 13.53 which would provide the process for requesting production of documents. This section would also be amended to clarify that only a party could request the production of documents under this section.

Amendments to § 13.57(c) would explain that the provision does not apply to FAA employees who appear at the direction of the FAA, because consistent with current practice, FAA employees appearing at the direction of the agency do not receive additional compensation for testifying on behalf of the agency. The amendments would also clarify the current witness payment provision in § 13.57(c) by specifying that subpoenaed witnesses would be entitled to fees and allowances as provided under 28 U.S.C. 1821, the applicable statute governing the payment of witnesses in judicial proceedings. Additionally, this section would explain that 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, would pay the witness fees. This would align the subpart D witness fee provision with the current provision in § 13.229 of subpart G, and § 13.121 of subpart F, as amended by this proposed rule.

The FAA proposes removing the fee-shifting provision in § 13.57(d) which currently permits the Hearing Officer to shift the standard witness fee burden from the party requesting the appearance of the witness to the FAA. This fee-shifting authority has not been used, is not supported by an applicable statute, and runs contrary to the “American Rule” that parties pay their own costs.

Proposed § 13.57(d) would state the requirements for service of subpoenas, modeled on the analogous Federal Rule of Civil Procedure 45(b). It would require that except for the

Complainant, the party that requested the subpoena must tender at the time of service of the subpoena the fees for 1 day's attendance and the allowances allowed by law if the subpoena requires that person's attendance. The proposed exemption for the Complainant would align the rule with Federal Rule of Civil Procedure 45(b), which does not require pre-payment of fees and allowances when the subpoena issues on behalf of the United States or any of its officers or agencies. This exemption would also align with the general principles against advance payment in 31 U.S.C. 3324.

The FAA proposes a new § 13.57(e) to explain how any person upon whom a subpoena has been served could file a motion to quash or modify the subpoena with the Hearing Officer at or before the time specified in the subpoena for compliance. The rule would require that the motion 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 things are 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. The FAA proposes that a motion to quash or modify the subpoena would stay the effect of the subpoena pending a decision by the Hearing Officer.

Finally, the proposed amendment would add § 13.57(f) to include instructions for seeking enforcement of a subpoena if it is disobeyed, allowing a party to apply to a U.S. district court to seek judicial enforcement of the subpoena.

#### Evidence (§ 13.59)

Section 13.59 provides how parties may present evidence at subpart D hearings, which party carries the burden of proof, and the Hearing Officer's authority to withhold private information from public disclosure. The FAA proposes to update the reference to "FAA counsel" to "complainant" to conform to the proposed explanation of complainant in § 13.33. The FAA

also proposes moving the Hearing Officer's authority to withhold private information from public disclosure to proposed § 13.49(f).

#### Record, decision, and aircraft registration proceedings (§ 13.63)

Section 13.63 currently defines what establishes the record in a case and provides that the record is the exclusive basis for the issuance of an order. The rule also permits either party to obtain a transcript of the hearing from the official reporter upon payment of a fee. The FAA proposes amending § 13.63 by creating new paragraphs (a) through (c) to define the parameters of a subpart D hearing record and also address the Hearing Officer's decisions.

Proposed § 13.63(a) would contain the content currently in § 13.63, with a minor edit to clarify that only admitted exhibits at the hearing, not all exhibits presented at the hearing, form part of the record.

Proposed § 13.63(b) would establish minimum standards for a Hearing Officer's decision, by requiring that the decision include findings of fact based on the record, conclusions of law, and an appropriate order.

The FAA would move the contents of current § 13.27(a), describing the Hearing Officer's authority to suspend or revoke a respondent's aircraft registration certificate upon the Hearing Officer's determination that the aircraft is ineligible for an aircraft registration certificate in proceedings relating to aircraft registration under 49 U.S.C. 44105, into proposed § 13.63(c).

#### Appeal to the Administrator, reconsideration, and judicial review (§ 13.65)

The FAA proposes adding § 13.65 to subpart D, which would be titled "Appeal to the Administrator, reconsideration, and judicial review." This new section would consolidate all pertinent subpart D appeal procedures, including appeals from Hearing Officer decisions, motions for reconsideration of the Administrator's decisions, and petitions for judicial review,

currently found in § 13.20(g) through (k); § 13.83(a), (c) through (e), and (g); and the filing and service requirements currently referenced in §§ 13.20(m) and 13.85.

Proposed § 13.65(a) would provide the consolidated procedures for appealing from the order of the Hearing Officer by filing with the FAA Hearing Docket a notice of appeal to the Administrator within 20 days after the date of issuance of the order. Filing and service of the notice of appeal, and any other papers, would continue to be accomplished according to the filing and service procedures proposed in § 13.43.

Proposed § 13.65(b) would contain the consolidated procedures which provide that if a notice of appeal is not filed from the order issued by a Hearing Officer, such order would be final with respect to the parties, but would not be binding precedent or subject to judicial review. This amendment would make clear that all Hearing Officer decisions could be appealed to the Administrator, and are otherwise final if not appealed. This amendment would also clarify an ambiguity in current § 13.19 by making clear that subpart D Hearing Officer decisions regarding notices of proposed certificate actions for matters under Title V of the Federal Aviation Act, now codified at 49 U.S.C. chapter 441, are appealable to the Administrator. Currently, § 13.19(c)(5) provides that a subpart D hearing may be requested for certificate actions regarding aircraft registration (covered by Title V of the Federal Aviation Act). However, unlike current §§ 13.20(g) and 13.83(a) and (b), it fails to provide that a Hearing Officer's decision reached at the conclusion of the subpart D hearing is appealable to the Administrator. This proposed amendment clarifies this point.

Proposed § 13.65(c) would provide filing deadlines for briefs to the Administrator, keeping the current time frames provided in current §§ 13.20(i) and 13.83(e), but with a deadline of 40 days, rather than 20, for filing a reply brief. This modified deadline of 40 days would provide both parties an equal amount of time to prepare their briefs to the Administrator.

The FAA would add § 13.65(d) to consolidate provisions in current §§ 13.20(j) and 13.83(g). These provisions provide that on appeal of a Hearing Officer's order to the Administrator, the Administrator would review the record of the proceeding, and issue an order dismissing, reversing, modifying or affirming the order, including the reasons for the Administrator's action. Additionally, the proposed amendment would add a requirement specifying that the Administrator could only consider whether: (1) each finding of fact is supported by a preponderance of the reliable, probative and substantial evidence; (2) each conclusion is made in accordance with law, precedent, and policy; and (3) the Hearing Officer committed any prejudicial error. This addition would harmonize this subpart D appeal provision with § 13.233(b) in subpart G and 49 U.S.C. 46301(d)(7)(A), which apply to civil penalty cases against persons not acting as pilots, mechanics, repairmen or flight engineers. Adopting this same standard for subpart D appeals to the Administrator would preclude frivolous and unnecessary appeals of initial decisions that merely delay the proceedings and decrease the deterrent effect of the sanction imposed.

Proposed § 13.65(e) would address the role of the Director and legal personnel of the Office of Adjudication. Specifically, this section would describe the scope of the Director's authority and provide that the Director and legal personnel of the Office of Adjudication serve as the advisors to the Administrator for appeals under this section. The proposed addition would also provide for re-delegation of the Director's authority, as necessary, except to Hearing Officers and others materially involved in the hearing that is the subject of an appeal.

Proposed § 13.65(f) would allow a party to file a motion requesting reconsideration of the final order of the Administrator. There are not currently any reconsideration procedures for orders of the Administrator on appeal from the Hearing Officer in subpart D matters. In contrast, parties in civil penalty proceedings under subpart G may file petitions for reconsideration of the

Administrator's order under § 13.234. This proposed addition to subpart D would provide consistency across the various FAA proceedings provided for under part 13. The FAA proposes that motions for reconsideration filed under § 13.65(f) would be filed with the FAA Hearing Docket within thirty days of service of the Administrator's Order. This would harmonize with the time provided for motions for reconsideration under subpart G in § 13.234.

Finally, proposed § 13.65(g) would address judicial review of the Administrator's final order under this proposed section as provided under 49 U.S.C. 5127 or 46110. This would create uniformity with the judicial review provision in subpart G, § 13.235.

#### Procedures for expedited proceedings (§ 13.67)

The FAA proposes adding a new § 13.67 to subpart D, which would provide an expedited hearing process for notices to which emergency procedures proposed in § 13.20(d) apply, as well as an expedited appeal process to the Administrator from a Hearing Officer's decision after an expedited hearing. Section 13.67(a) would explain that the procedures in subpart D generally apply to the proposed expedited administrative process, except as provided by certain procedures in § 13.67 intended to facilitate the expedited nature of the process. For example, service and filing of pleadings, motions, and documents would have to be by overnight delivery and fax or email to accommodate the shorter time-periods provided under the proposed expedited procedures. Additionally, all responses to motions, the complaint, and an answer would be due on an abbreviated timeline as compared to other subpart D matters. The rule would make clear that all allegations in the complaint not specifically denied in the answer would be deemed admitted, which is consistent with the Federal Rules of Civil Procedure, current § 13.35(c) in subpart D, and § 13.209 in subpart G. Additionally, a failure to file a timely answer, absent a showing of good cause, would constitute withdrawal of the request for hearing. The proposed rule would also require that within 3 days of the filing of the complaint the Director of the Office

of Adjudication would assign a Hearing Officer to preside over the matter. Furthermore, the expedited hearing would commence within 40 days after the filing of the complaint.

Given the abbreviated time frames in the proposed expedited administrative process, the parties would be required to serve discovery requests as soon as possible. The proposed rule would allow parties to set the time limits for compliance with discovery requests to accommodate the accelerated schedule. The rule would also provide that the Hearing Officer would resolve any failure of the parties to agree to a discovery schedule.

Proposed § 13.67(a)(7) would provide that, at the conclusion of the proposed expedited hearing, a Hearing Officer would issue an order dismissing, reversing, modifying, or affirming the notice. The Hearing Officer's order would be appealable to the Administrator under an expedited appeal process. If neither party filed a notice of appeal from the order, it would be final with respect to the parties and not subject to judicial review.

Proposed § 13.67(b) would provide the procedures for an expedited appeal of the Hearing Officer's final order to the Administrator. A party would file a notice of appeal within 3 days after the issuance of the order. Time limitations for the filing of documents for appeals under this section would not be extended because of the unavailability of the hearing transcript. Under proposed § 13.67(b)(1), the expedited appeal would require a party to perfect the appeal within 7 days after filing the notice of appeal by filing a brief. Any reply would have to be filed within 7 days after the date the appeal brief was served on that party. The Administrator would issue an immediately effective order deciding the appeal no later than 80 days after the date the notice of proposed action was issued. This 80-day time period is proposed to ensure that the Administrator's order would be issued prior to the expiration of the 80-day time-limited immediately effective order. Proposed § 13.67(b)(2) would explain that the Administrator's order would be immediately effective and constitute the final agency decision. It would also

provide that a respondent could petition a U.S. court of appeals for review of the Administrator's order pursuant to 49 U.S.C. 46110, although such a petition for review would not stay the effectiveness of the Administrator's order due to the emergency nature of the order.

Finally, proposed § 13.67(c) would provide that any time after an immediately effective order is issued, the FAA could ask the United States Attorney General, or the delegate of the Attorney General, to bring an action for appropriate relief in accordance with § 13.25. The FAA's current authority to request such action is located in § 13.25, in subpart C. By adding such a provision to subpart D, the amendment would clarify that a Hearing Officer's final, non-appealed order issued after an expedited administrative hearing would be enforceable by the FAA in a U.S. district court, as provided in § 13.25. The same would be true of the Administrator's final order issued under the proposed subpart D expedited appeal provisions.

#### Other matters: Alternative dispute resolution, standing orders, and forms (§ 13.69)

The FAA proposes adding § 13.69 titled "Other matters: alternative dispute resolution, standing orders, and forms." This new section would provide for the voluntary use of mediation, consistent with the DOT's statement on ADR.<sup>7</sup> Mediation is a form of ADR in which a neutral mediator assists with open discussion between parties in dispute and helps them come to a mutually agreeable solution. A mediator has no authority to impose a decision on the parties. Parties may engage the services of a mutually acceptable mediator. The mediator could not participate in any subsequent adjudication of the case under subpart D.

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<sup>7</sup> *Department of Transportation Alternative Dispute Resolution Policy Statement*, 67 FR 40367 (Jun. 12, 2002).

As provided in DOT's ADR statement, the FAA believes that the use of ADR would help resolve disputes at an early stage in an expeditious, cost-effective, and mutually acceptable manner. Participation in ADR is voluntary and there must be mutual agreement to its use. The FAA would not impose ADR on parties. Additionally, the FAA recognizes the importance of confidentiality in ADR, which would ensure that the parties may speak freely with a neutral who will not disclose their confidences to other parties or to the outside world. Without that assurance, the parties may be unwilling to freely discuss their interests and possible settlements. Confidentiality would also allow the parties to raise sensitive issues and discuss creative ideas and solutions that they would be unwilling to discuss publicly. The proposed mediation process, therefore, would provide confidentiality consistent with the provisions of the Administrative Dispute Resolution Act, 5 U.S.C. 571-584, the principles of Federal Rule of Evidence 408, and other applicable Federal laws.

The FAA also proposes providing the Director of the Office of Adjudication with the authority to issue standing orders and forms needed for the proper dispatch of business under subpart D. Such standing orders could describe common procedure or practices such as font requirements and page limits on pleadings. All applicable forms and standing orders would be published on the official website of the Office of Adjudication:

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/adjudication/](http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/).

The use of standing orders and forms promotes efficient case management practices, ensures that the Office of Adjudication can adapt to new circumstances, and provides the public with pertinent information. The authority to issue forms would be used to standardize the subpoena process as well as other processes if the need arises.

E. SUBPART E—ORDERS OF COMPLIANCE UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT

Subpart E (current § 13.71 through 13.87) states who has the authority to issue an order of compliance related to violations of the HMTA. It includes the process of issuing a notice of proposed order of compliance, how a person may respond to a notice, and the consequences of failing to respond to a notice. It also provides for disposing of a case through a consent order of compliance. Statutory citations would be updated throughout this section.

Current §§ 13.79, 13.83, 13.85, and 13.87 would be removed and reserved because their subjects, related to appeals of non-emergency orders of compliance, would be addressed in proposed subpart D. The remaining amendments to this subpart are addressed in the section-by-section discussion.

Applicability (§ 13.71)

Section 13.71 describes when an order of compliance may be issued under this subpart. Proposed § 13.71(a) would add an explicit statement that an order of compliance may be issued after notice and an opportunity for hearing per proposed §§ 13.73 through 13.79. It would also amend the delegation of authority to reflect the reorganization of the Office of the Chief Counsel.

A new § 13.71(b) would be added to clarify that emergency orders of compliance are issued per § 13.81.

Notice of proposed order of compliance (§ 13.73)

Section 13.73 currently provides the authority to issue a notice of proposed order of compliance and describes its contents. The FAA proposes to update the delegation of authority in this section just as described in the delegation amendment for § 13.71.

Reply or request for hearing (§ 13.75)

A person may reply to a notice of proposed order of compliance consistent with § 13.75. The FAA proposes to amend § 13.75(a)(2) by adding an express statement that a person may request an informal conference with an agency attorney. Accordingly, the process for requesting a hearing must also be amended to account for instances in which an informal conference has occurred. This change supports the harmonization of options for responding to a notice throughout part 13 and is consistent with current practice in HMTA proceedings.

#### Consent order of compliance (§ 13.77)

Currently, § 13.77 provides the process for issuing a consent order of compliance to settle a case initiated under this subpart. The proposed § 13.77 changes parallel similar proposed amendments to the consent order requirements in § 13.13.<sup>8</sup>

#### Emergency orders (§ 13.81)

Existing § 13.81 describes the authority and procedure for issuing an emergency order of compliance. The FAA proposes to amend the delegation of authority to issue an emergency order in the same way as proposed in § 13.71(a). For purposes of consistency and clarity, the FAA also proposes to revise § 13.81(a) to reference the criteria for issuing an emergency order of compliance.

Current § 13.81(a)(2) and (a)(3) would be deleted and replaced with § 13.81(a). That section would cite the definition of “imminent hazard” in 49 CFR 109.1, which is the source of current § 13.81(a)(2) and (a)(3).

Current § 13.81(b) and (e) through (g) would be removed as those matters are now addressed in 49 CFR part 109, subpart C.

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<sup>8</sup> Section 13.13 governs consent orders associated with orders issued under subpart C while § 13.77 addresses only consent orders associated with hazmat orders of compliance issued under subpart E.

F. SUBPART F—FORMAL FACT-FINDING INVESTIGATION UNDER AN ORDER OF INVESTIGATION

Subpart F (current § 13.101 through 13.131) governs formal fact-finding investigations under FAA orders of investigation. The FAA proposes amending this subpart for clarity, improved readability, to update outdated statutory references, and to harmonize provisions in this subpart with other subparts in part 13. The FAA has proposed several editorial changes to §§ 13.101 through 13.109 to clarify the existing language but no substantive changes have been made to these sections.

Subpoenas (§ 13.111)

Section 13.111 governs the issuance, service, and jurisdiction of subpoenas under subpart F. The FAA proposes amending § 13.111(a) to clarify that a Presiding Officer, an FAA employee who is named in an investigation report by an individual authorized in current § 13.3, need not file a motion for the issuance of a subpoena; rather the Presiding Officer may issue a subpoena at his or her discretion.

Noncompliance with the investigative process (§ 13.113)

Section 13.113 provides consequences for noncompliance with a subpoena or order issued under subpart F, as well as for noncompliance with the provisions in subpart F. The FAA proposes amending this section to divide the text into paragraphs (a) and (b) to delineate against whom judicial enforcement may be sought for noncompliance with subpoenas, orders of the Presiding Officer, and with the provisions of subpart F. Section 13.113 currently provides for judicial enforcement for noncompliance by “any person.” The FAA proposes creating § 13.113(a) to specify that the Administrator may seek judicial enforcement of a subpoena when any person disobeys a subpoena. Proposed § 13.113(b), however, would only provide for judicial enforcement of the provisions of this subpart or an order issued by the Presiding Officer

against a party to the investigation.

#### Immunity and orders requiring testimony or other information (§ 13.119)

The FAA proposes amending the title of §13.119 from “Rights of persons against self-incrimination” to “Immunity and orders requiring testimony or other information.” This proposed title would more accurately reflect the current contents of this section.

#### Witness fees (§ 13.121)

Section 13.121 governs witness fees in formal fact-finding investigations under subpart F. This section currently provides that all witnesses appearing shall be compensated at the same rate as a witness appearing before a U.S. district court. The proposed amendment would include additional specificity by citing the provision that describes the fees and allowances that must be paid to witnesses in 28 U.S.C. 1821, and would incorporate language consistent with the statute by replacing “rate” with “fees and allowances.”

#### Reports, decisions, and orders (§ 13.127)

Currently, § 13.127 provides that the FAA will publish a report of investigation in “the public docket” to comply with the requirement in 49 U.S.C. 40114 to publish the report. Because the statute does not require publication by a specific means and the existing regulation does not specify a particular docket, the FAA proposes to remove the non-specific docket reference to provide continued flexibility on how to publish a report. For example, the FAA could publish the report on the FAA website and provide notice of its availability on the FAA website in the Federal Register as a way to meet the statutory requirement to publish it “in the form and way best adapted for public use.” The provision has also been amended to remove language that is not regulatory in nature because it describes how the regulation demonstrates compliance with the statute.

G. SUBPART G—RULES OF PRACTICE IN FAA CIVIL PENALTY ACTIONS

Subpart G (§§ 13.201 through 13.235) provides the rules of practice applicable to appeals of FAA civil penalty actions initiated under § 13.16. This rulemaking proposes to reorganize and modernize the rules of practice applicable to subpart G proceedings (referred to as civil penalty proceedings) and create consistency, where appropriate, within subpart G and across part 13.

The applicability of subpart G as provided in § 13.201 has not changed, however, this rulemaking would remove the date reference to September 7, 1988, as there are no longer any open proceedings that were initiated on or prior to September 7, 1988, so the antiquated reference no longer serves any purpose. The following miscellaneous changes are also proposed throughout subpart G, but are not specifically addressed in the section-by-section analysis. For accuracy and consistency, the FAA proposes replacing references to the FAA “decisionmaker,” with “FAA Hearing Docket” when in reference to filing requirements, because under current practice, documents are sent to the FAA Hearing Docket, not the FAA decisionmaker. Similarly, all references to the “hearing docket clerk” would be replaced with “FAA Hearing Docket” to accurately reflect current practice.

The FAA also proposes amending the filing and service instructions by adding cross-references to §§ 13.210 and 13.211, which would contain amended filing and service instructions permitting the use of email or fax to file and serve documents. The FAA anticipates that these additional methods of filing and service will increase the speed, efficiency, and convenience of the process of filing and service, and in some instances may decrease costs. Email service and filing would be voluntary. The FAA also proposes removing redundant filing and service information. Any service or filing requirements that diverge from the proposed instructions in §§ 13.210 and 13.211 would be specifically described in the provision addressing that particular document.

## Definitions (§ 13.202)

Section 13.202 currently contains the definitions applicable to civil penalty proceedings. The FAA proposes amending this section to define new terms and to revise some current definitions.

To accurately reflect the reorganization of the Chief Counsel's Office, the FAA proposes defining the term "Office of Adjudication" as the Federal Aviation Administration Office of Adjudication, including the FAA Hearing Docket, the Director of the Office of Adjudication and legal personnel, or any subsequently designated office (including its head and any legal personnel) that advises the FAA decisionmaker regarding appeals of initial decisions and orders to the FAA decisionmaker.

The definition of "agency attorney" would be amended to make it consistent with the current structure and operation of the Office of the Chief Counsel. The definition would also amend the list of those persons specifically precluded from acting as agency attorneys by removing enumerated paragraphs (1) through (3) and providing that an agency attorney would not include the Chief Counsel or anyone from the Office of Adjudication. The FAA notes that the Deputy Chief Counsel responsible for enforcement-related prosecutions does not participate in the advising of the FAA decisionmaker on the resolution of appeals from initial decisions or orders issued by administrative law judges and thus is not excluded from the definition of agency attorney.

The FAA also proposes amending the definition of "mail" to clarify that it does not include email, and does include all U.S. mail and expedited courier service.

The FAA proposes changing the definition of the word "party" to include an intervenor. The FAA also proposes adding a definition of the word "Complainant" to clarify that the

Complainant is the office that initiates the action by issuing a notice of proposed civil penalty under § 13.16.

Finally, the FAA proposes adding a definition of “writing or written” to provide that it would include paper or electronic documents that are filed or served by email, mail, personal delivery, or fax.

#### Separation of functions (§ 13.203)

Section 13.203 currently provides that agency attorneys prosecute civil penalty proceedings. It also addresses the separation of functions within the FAA. The FAA proposes amending § 13.203(c) by replacing the current list of advisors to the FAA decisionmaker with the Chief Counsel, and the Director and legal personnel of the Office of Adjudication. This amendment would reflect the current structure of the Office of the Chief Counsel, as set forth in FAA Order GC 1100.170, effective January 3, 2017 (available at [http://www.faa.gov/regulations\\_policies/orders\\_notices/](http://www.faa.gov/regulations_policies/orders_notices/)), and would also be consistent with the Administrator’s delegation of authority to the Chief Counsel and the Director of the Office of Adjudication to manage appeals in civil penalty cases governed by part 13, subpart G (81 FR 24686, April 26, 2016).

As in the current rule, the Chief Counsel is an advisor to the FAA decisionmaker regarding appeals of initial decisions and orders. Under the current delegation of authority and office structure, the Director of the Office of Adjudication has replaced the Assistant Chief Counsel for Litigation as advisor to the FAA decisionmaker on appeals from initial decisions and orders issued by an ALJ. The Director of the Office of Adjudication has no responsibilities for the investigation or prosecution of civil penalty cases.

These proposed amendments would maintain the separation of functions between FAA employees who serve as prosecutors – the “agency attorneys” – and the employees who advise the Administrator regarding the resolution of appeals in civil penalty cases.

#### Appearances and rights of parties (§ 13.204)

Section 13.204 provides the rights of parties to appear and be heard in person, to have representation, and to request copies of documents in the record. While it is common practice for a party’s representative to file a notice of appearance, the rule currently does not require a notice of appearance. Additionally, the rule does not currently require a party to file a copy of the notice of appearance on the ALJ assigned to the matter.

The FAA proposes amending § 13.204(b) to clarify that any attorney or other representative of a party in a matter must file a notice of appearance in the action. The content currently required in a notice of appearance would also be amended to include the email address and fax number, if available, of the attorney or other representative. The amendment would also require a party to serve a copy of the notice of appearance on the ALJ, if one is assigned to the matter when the notice of appearance is filed. Under current practice, the notice of appearance is served only on each party and not on the ALJ. These amendments would facilitate an ALJ’s administration of a case.

#### Administrative law judges (§ 13.205)

Section 13.205 currently enumerates the powers and limitations of an ALJ in FAA civil penalty proceedings. It also provides that an ALJ may self-disqualify at any time and that parties may file a motion for disqualification of the assigned ALJ.

The FAA proposes amending § 13.205(a) by removing from the list of an ALJ’s powers the authority to issue a notice of deposition. This reference was originally included in error, as the ALJ is not responsible for providing a notice of deposition. Rather, a party requesting a

deposition is responsible for providing a notice of deposition, as is correctly provided in current § 13.220(j)(3).

Section 13.205(b), which limits an ALJ's sanction authority, provides that an ALJ retains the authority to bar a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding. The FAA proposes to amend § 13.205 by moving the provision authorizing an ALJ to bar a person from a specific proceeding under specified circumstances to § 13.205(a), where the other powers of an ALJ are listed, as new § 13.205(a)(10).

The FAA also proposes adding a new § 13.205(a)(11), to state that an ALJ could take any other action authorized under subpart G. This amendment would make clear that the list of powers enumerated in § 13.205 is not exhaustive and must be read in the context of subpart G in its entirety.

The FAA also proposes amending § 13.205(b) to correct an erroneous cross-reference. The amendment would replace the cross-reference to § 13.219(c)(4) with a cross-reference to section § 13.219(c), since § 13.219(c)(4) does not exist in either the current or proposed rule.

#### Certification of documents (§ 13.207)

Section 13.207 currently provides the rules for certification of documents that are filed or served in subpart G matters. The FAA proposes amending the existing signature requirement in § 13.207(a) to explain how to satisfy the signature requirement when filing or serving a document by email. The amendment would provide that documents tendered for filing with the FAA Hearing Docket or served on the ALJ and on each party must be signed by hand, electronically, or by other method acceptable to the ALJ, or if the matter is on appeal, to the FAA decisionmaker.

#### Complaint (§ 13.208)

Section 13.208 governs complaints filed in FAA civil penalty proceedings. It addresses filing, service, and content requirements, as well as instructions for motions to dismiss allegations or the entire complaint.

Section 13.208(a) contains the instructions for filing complaints. The FAA proposes removing the filing instructions regarding the number of required copies, as this requirement would be addressed in § 13.210. The FAA also proposes amending the cross-reference in § 13.208(a) from § 13.218(f)(2)(i) to § 13.218 and specifying that the referenced “written motion” specifically refers to a motion to dismiss a request for hearing.

Section 13.208(b) contains the instructions for serving the complaint in civil penalty proceedings. The FAA proposes removing the reference to service by personal delivery or mail and instead cross-referencing § 13.211.

#### Answer (§ 13.209)

Section 13.209 contains the rules governing answers filed in FAA civil penalty proceedings. The FAA proposes a non-substantive reorganization of the various paragraphs in § 13.209, as indicated in the Redesignation Table. Additional amendments would include replacing the specific filing instructions in § 13.209(b) with a cross-reference to the proposed filing instructions in proposed § 13.210. The language regarding the 30-day time frame to file an answer in current § 13.209(b) would be removed because this requirement already appears in current § 13.209(a).

Section 13.209(c) would be amended to address service of motions filed in lieu of an answer to the complaint, as provided in § 13.209(a). The FAA also proposes adding a cross-reference to the service instructions in proposed § 13.211.

The FAA proposes amending § 13.209(d), which addresses the contents of an answer, to provide that the person filing an answer may suggest a location for the hearing when filing the answer. This requirement is being moved from current § 13.209(b) and into proposed § 13.209(d) to consolidate all the content requirements for an answer.

The FAA proposes amending § 13.209(e), which currently provides that a statement or allegation in the complaint that is not specifically denied in an answer may be deemed admitted. The amendment would provide that all allegations in the complaint not specifically denied in the answer are deemed admitted. This is consistent with the Federal Rules of Civil Procedure, and current § 13.35(c) in subpart D.

#### Filing of documents (§ 13.210)

Section 13.210 provides filing instructions for civil penalty proceedings, but currently does not permit parties to file by email or fax. The FAA proposes amending § 13.210 to provide for filing by email and fax. In addition, the filing addresses would be updated to reflect organizational updates and to correct existing address errors.

Section 13.210(a) would be amended to move the methods of filing to proposed § 13.210(b). The FAA also proposes reorganizing § 13.210(a) by moving the requirements regarding the number of copies needed for filing to new proposed § 13.210(g), and moving the FAA Hearing Docket addresses for filing by mail and in person to § 13.210(c). Two new methods of filing with the FAA Hearing Docket, by email and fax, would be added in proposed § 13.210(b). Guidelines for filing can be found on the FAA Office of Adjudication website: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/adjudication/civil\\_penalty/](http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/civil_penalty/). Amendments throughout subpart G would add cross-references to proposed § 13.210, which would require documents to be filed with the FAA Hearing Docket.

Section 13.210(b) contains the date of filing provision, which explains when a document would be considered filed with the FAA Hearing Docket. The FAA proposes moving this date of filing provision to § 13.210(d) and in its place adding the FAA Hearing Docket mailing addresses currently in § 13.210(a)(1) and (a)(2), amended to reflect organizational updates and to correct existing address errors. The FAA also proposes adding a new provision that would explain how to file by email or fax.

Section 13.210(c) would specifically require a person filing a document with the FAA Hearing Docket to use the appropriate address corresponding to the method of service used. The email address and fax number, as well as other contact information, for the FAA Hearing Docket would be available on the FAA Office of Adjudication website at:

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/adjudication/civil\\_penalty/](http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/civil_penalty/).

Section 13.210(c) currently contains the form requirements for filings with the FAA Hearing Docket. The FAA proposes moving these requirements to § 13.210(e) and in their place adding the date of filing definition currently in § 13.210(b), amended to add the date of filing for email and fax filing. Section 13.210(d) would provide how the date of filing is determined depending on the method of filing used.

Section 13.210(d) currently provides the required contents for documents filed with the FAA Hearing Docket. The FAA proposes to redesignate paragraph (d) as paragraph (f), and in its place provide the form requirements for filings with the FAA Hearing Docket currently in § 13.210(c), without amendment.

Section 13.210(e)(1) currently explains that materials filed in the FAA Hearing Docket in civil penalty adjudications are made publicly available on the Federal Docket Management System's (FDMS) website, *www.regulations.gov*. For purposes of administrative efficiency, the

FAA plans to discontinue using the FDMS website for such materials. Final decisions will continue to be made available on the FAA's website and through commercial legal reporting services.

The FAA notes that the Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(2), requires federal agencies to make certain adjudicatory materials available to the public electronically for public inspection. Each agency must make final opinions and orders issued in the adjudication of cases "available for public inspection in an electronic format" and "to maintain and make available for public inspection current indexes of final decisions and orders in an electronic format." 5 U.S.C. 552(a)(2).

When a party appeals from an initial decision issued by an ALJ in a civil penalty proceeding, the Administrator will issue a final decision and order. The Administrator's final decisions and orders are precedential.<sup>9</sup> The FAA makes the Administrator's final agency decisions and indexes of those decisions available on its website. In addition, the Administrator's final agency decisions, as well as the initial decisions issued by ALJs, are published in electronic and paper formats by commercial publishers. Thus, the FAA will continue to meet the requirements of the FOIA.

In addition, due to the service requirements in subpart G, parties and the ALJs will have copies of all documents filed in the FAA Hearing Docket. Hence, they will not need to rely on FDMS website.

Section 13.210(e)(2) currently explains that certain information, including the Administrator's final decisions and orders and indexes of those decisions and orders, are

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<sup>9</sup> Under existing 14 CFR 13.233(f)(3) (proposed § 13.233(j)(3)), "Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed" to the Administrator "is not precedent in any other civil penalty action."

available on the FAA website. Although we plan to continue to make these materials available on the FAA website, we propose to delete this paragraph because it is only informational.

Section 13.210(f) would be amended to set forth the content requirements for documents filed with the FAA Hearing Docket that are currently in § 13.210(d).

The FAA proposes adding new § 13.210(g) titled “Requirement to File an Original Document and Number of Copies.” This new section would retain the filing requirement currently in § 13.210(a) which provides that a party shall file an original document and one copy when filing by personal delivery or by mail. To accommodate for the addition of email and fax filing, the amendment would provide that only one copy is required when filing is accomplished by email or fax.

Finally, the FAA proposes adding new § 13.210(h) titled “Filing by email.” This new section would require all documents filed by email to be attached to the email message as a Portable Document Format (PDF) file. The email message, however, would not constitute a submission, but serves only to deliver the attached PDF file to the FAA Hearing Docket. The amendment would also require that all documents emailed for filing be signed in accordance with § 13.207 as amended.

#### Service of documents (§ 13.211)

Section 13.211 provides instructions for serving documents in civil penalty proceedings. It currently does not provide for service by email or fax. The FAA proposes amending § 13.211 to permit service by email and fax and reorganizing and amending the existing provisions to accommodate service by fax and email.

Section 13.211(a) states who must be served a copy of a document filed with the FAA Hearing Docket. Currently, the section only provides for service on each party at the time of filing. The FAA proposes amending this section to also require service of any document filed in

the FAA Hearing Docket on the ALJ, if assigned, unless otherwise provided. This new requirement to serve the ALJ would not add a paperwork burden on the parties because under current practice the ALJ issues procedural orders requiring that the parties send documents to them directly. The FAA also proposes amending § 13.211(a) by removing the explanation that service on a party's attorney of record or a party's designated representative may be considered adequate service on the party. This provision is unnecessary as it simply states the universally accepted legal practice in the United States, and its removal would harmonize subpart G with the other subparts in part 13 which do not address this universal principal by regulation.

Section 13.211(b) provides the types of service permitted in civil penalty proceedings. The FAA proposes moving this requirement to § 13.211(c) and in its place adding a provision that would allow the FAA Hearing Docket, the ALJ, and the FAA decisionmaker to send documents to a party by personal delivery, mail, fax, or email. This provision would replace a similar provision currently in § 13.211(f), which provides that an ALJ shall serve parties with documents by personal delivery or mail. Allowing email service, if the party has consented to it, or service by fax would enable parties to receive documents faster and by more cost-effective means.

Section 13.211(c) provides the rules regarding certificates of service accompanying served documents. The FAA proposes moving these requirements to § 13.211(d) and in their place, describing the types of service permitted, currently in § 13.211(b). The FAA proposes adding paragraph (c)(1), which would expand the currently permitted methods of service to include service by email or fax. This addition should make service less costly and more efficient for parties. The amendment would also add paragraph (c)(2) to make clear that service of documents by email is voluntary and requires the prior consent of the person to be served by email. The proposed amendment would also allow a person to retract consent to be served by

email by filing a written retraction with the FAA Hearing Docket and serving it on the other party and the ALJ. Finally, for consistency with the subpart G proposed filing requirements, the amendment would require that all documents filed by email be attached as a PDF file to an email. These amendments to the subpart G service requirements would provide parties with greater flexibility in how they choose to serve documents and how they are served by other parties.

Section 13.211(d) explains the date a document is considered served. The FAA would move this explanation to § 13.211(e) and in its place including the certificate of service requirement currently in § 13.211(c). The FAA proposes amending the description of a certificate of service to make clear that a person is required to include a certificate of service with a document filed with the FAA Hearing Docket and that the certificate must include a statement, dated and signed by the person filing the document, reciting the date it was served, the method of service, and on whom it was served.

Section 13.211(e) currently contains the “mailing rule” which provides parties with additional time to serve documents when service is accomplished by mail. The FAA proposes removing the “mailing rule” which automatically extends parties’ deadlines by five additional days. Instead, under this proposal, a party who may or must act within a specified time after service would need to seek an extension of time if additional time to act is needed. Elimination of the mailing rule would ensure that the same filing and service deadlines, without automatic extensions, apply to all the methods of filing and service. This amendment would also help harmonize part 13, as subpart D does not currently provide an equivalent mailing rule. While the proposed new methods of service by email and fax negate the need for the mailing rule, the FAA recognizes that parties may still choose to serve documents by mail. The FAA, therefore, is considering extending the time frames provided in subpart G for actions or responses, such as,

but not limited to: the 10-day time frame in section 13.218(d); the 15-day time frame in section 13.218(f)(6); and the 30-day time frames in sections 13.231(c) and 13.232(c). The FAA requests the public's comments on whether such time frames are sufficient in light of the removal of the mailing rule, or whether they should be extended, and by how much.

The FAA proposes moving current § 13.211(g), which addresses when there is valid service of documents, to § 13.211(f), and amending the section to specify that it applies to documents served by mail or personal delivery.

Finally, § 13.211(h), describing when there is a presumption of service, would be removed as unnecessary because proposed § 13.211(f) would already describe when there is valid service.

#### Extension of time (§ 13.213)

Section 13.213 provides the rules for requesting extensions of time, which are currently divided into oral requests and written motions. The FAA would amend this section to eliminate the distinction between oral requests and written motions, and instead to distinguish between requests for extensions that the parties have or have not agreed upon.

Proposed § 13.213(a) would provide that the ALJ must sign and issue the parties' proposed order for extension of time if the extension request is for a reasonable length of time. This added requirement of reasonableness would help avoid unnecessary delays in litigation and it would also eliminate the restriction that the ALJ could only grant an agreed-upon extension once for each party.

Section 13.213(b), which addresses written motions for extensions of time would no longer be titled "written motions," since this section actually addresses extension requests where the parties have not agreed to the extension. The FAA would amend this section by removing the current mandatory language and replacing it with discretionary language to make clear that a

party “may” file a written motion for an extension request. The FAA also proposes adding regulatory cross-references to §§ 13.210 and 13.211 to make clear that if a party files such a motion with the FAA Hearing Docket, it must be done in accordance with these sections, which require that a copy of the motion be served on the ALJ and on each party. The FAA would not amend the timing requirement currently in § 13.213(b).

Section 13.213(c) would be amended to remove the “failure to rule” title and the reference to a “written” motion for an extension of time, to make clear that this provision applies to all requests for extensions. The remaining contents of the paragraph would not change.

#### Amendment of pleadings (§ 13.214)

Section 13.214 governs the amendment of pleadings and currently requires a party to file all proposed amendments and responses with the ALJ, and also serve a copy on each party to the proceedings. The FAA proposes amending § 13.214(a) and (c) to align with the amended filing and service requirements in §§ 13.210 and 13.211. This would require parties to file proposed amendments and responses with the FAA Hearing Docket, and would also require service of a copy on the ALJ and each party to the proceedings. This would ensure consistency in filing and service requirements throughout subpart G.

#### Joint procedural or discovery schedule (§ 13.217)

Section 13.217 governs joint procedural and discovery schedules. The FAA proposes amending § 13.217 to update the filing and service requirements for consistency across subpart G, to restate the scope of the ALJ’s sanction options for failure to comply with a joint schedule, and to increase readability of the section.

The FAA proposes amendments to § 13.217(b) and (b)(2) to update the filing and service requirements which currently provide that parties must file the joint schedule with the ALJ, and must serve each party with a copy. To ensure consistency in the filing and service of documents

across subpart G, these proposed amendments would provide that the joint schedule must be filed and served in accordance with proposed §§ 13.210 and 13.211 respectively.

The FAA also proposes a minor, non-substantive amendment to § 13.217(d) to change the section title to “Joint scheduling order,” and to make clear that a joint schedule filed by the parties is a proposed schedule that requires approval of the administrative law judge to become the joint scheduling order.

Section 13.217(f) governs the ALJ’s sanction options for a party’s failure to comply with a joint scheduling order. The FAA proposes amending this section to clarify that if a party fails to comply with a joint scheduling order, the ALJ may impose any of the listed sanctions as long as the sanction is proportional to the party’s failure to comply with the scheduling order. The amendment would replace the current language “limited to the extent of the party’s failure to comply” with the phrase “proportional to the party’s failure to comply” simply to make the rule less wordy and more readable. The amendment would also delete the current language that the ALJ “may direct the party to comply with a motion to discovery request” because a party does not have to comply with a motion or discovery request but instead with the scheduling order. These proposed revisions would not affect the ALJ’s authority to adjust the schedule or direct a party to respond to a discovery request, as that authority is distinct from the ALJ’s authority to impose sanctions under § 13.217(f).

#### Motions (§ 13.218)

Section 13.218 governs motions practice in civil penalty proceedings. The FAA proposes amending the filing and service requirements in this section to align with and reference the filing and service amendments in proposed §§ 13.210 and 13.211. Proposed amendments would also add clarity, specify that the list of motions included in this section is not exhaustive, provide that the ALJ’s authority to strike allegations in the complaint in response to a motion for more

definite statement is discretionary, more closely align motions to strike with Rule 12 of the Federal Rules of Civil Procedure, and add a new provision to address motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing, or order dismissing a request for hearing and answer.

Section 13.218(f) would be amended to clarify that the listed motions are not exclusive by modifying the provision to state that the motions that a party may file “include” the listed motions. Paragraphs (f)(2)(i) and (f)(2)(ii) would be amended for clarity by specifying that the referenced decision on appeal refers to the FAA decisionmaker’s decision on appeal. Section 13.218(f)(2)(ii), which addresses motions to dismiss a complaint, would also be amended to add a cross-reference to § 13.208 which permits the filing of a motion to dismiss a complaint in lieu of filing an answer to the complaint when the allegations are “stale.”

Additionally, § 13.218(f)(3)(i) would be amended to provide that the ALJ may—rather than must—strike an allegation in the complaint if the agency attorney fails to comply with the ALJ’s order to supply a more definite statement. This change gives the ALJ more flexibility to regulate the course of the proceedings.

Section 13.218(f)(4) would be amended to add that a party may move to strike “impertinent” and “scandalous” matters in a pleading, to conform with Rule 12 of the Federal Rules of Civil Procedure. The current rule permits a motion to strike “redundant,” “immaterial” or “irrelevant” material. The FAA proposes deleting the word “irrelevant” as unnecessary with the proposed addition of “impertinent” matter. The proposed rule would be in harmony with the similar proposed rule regarding motions to strike in subpart D, § 13.49(d).

Finally, the FAA would add a new § 13.218(f)(7), titled “Motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing or order dismissing a request for hearing and answer.” This proposed section would explain that the FAA

decisionmaker could treat such motions as notices of appeal to the FAA decisionmaker. If such motions were filed within the time permitted for filing a notice of appeal, the FAA decisionmaker would issue a briefing schedule. This proposed addition would not establish new practice, but rather reflect current practice and case law. The Administrator has held that once the ALJ issues an initial decision, the ALJ loses jurisdiction over the matter and therefore does not have authority to reconsider the initial decision. *Degenhardt*, FAA Order No. 90-20 (August 16, 1990). The Administrator has also held that the ALJ has no jurisdiction after issuing an order dismissing a complaint, (*Keller*, FAA Order No. 2011-2 (Jan. 11, 2011)), or an order dismissing a request for hearing, (*Seeman*, FAA Order No. 2014-3 (Oct. 29, 2014); *Barnhill*, FAA Order No. 92-32 (May 5, 1992) (ALJ does not have jurisdiction to reconsider an order granting a motion for summary judgment)).

Parties have at times filed motions seeking reconsideration, rehearing or modification after the ALJ has issued an initial decision or an order dismissing a request for hearing or complaint even though the rules of practice do not provide for such motions. The Administrator has directed that in such instances, the ALJ should forward the motions to the FAA decisionmaker for consideration as an appeal. The ALJs have referred these motions to the Administrator and the Administrator has construed such motions as notices of appeal, and at times, if the motions were sufficiently detailed, as appeal briefs as well.<sup>10</sup>

The FAA has concluded that amending the rules to permit an ALJ to reconsider an order dismissing a request for hearing or a complaint, or an initial decision would unduly lengthen the civil penalty proceedings. The FAA therefore proposes amending the rule to reflect current

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<sup>10</sup> *E.g.*, *Seeman*, (Administrator construed Complainant's motion to vacate order for default judgment as a notice of appeal and an appeal brief); *Rawlings*, FAA Order No. 1997-33 (Oct. 21, 1997) (Administrator construed a memorandum to the ALJ that was received after the ALJ dismissed the proceedings due to the respondent's failure to file an answer as a notice of appeal).

practice and case law, clarifying that the FAA decisionmaker may treat any motion for reconsideration or the like as a notice of appeal under § 13.233. Further, if the motion was filed during the time period for filing notices of appeal, then the Administrator, if appropriate, would issue a briefing schedule.

#### Interlocutory appeals (§ 13.219)

Section 13.219 addresses interlocutory appeals in civil penalty proceedings. The FAA proposes amending § 13.219(b), (c) and (d) to provide that written notices of, requests for, or briefs on interlocutory appeal must be filed with the FAA Hearing Docket and served on each party and the ALJ. This would ensure conformity with the service and filing amendments made to §§ 13.210 and 13.211.

#### Discovery (§ 13.220)

Section 13.220 governs discovery in civil penalty proceedings. The FAA would amend § 13.220(b), (g), and (h), the provisions addressing methods of discovery, confidential orders, and protective orders, to align their filing and service instructions with proposed amendments to §§ 13.210 and 13.211 requiring documents to be filed with the FAA Hearing Docket and served on the ALJ and each other party.

Additionally, the FAA proposes amending § 13.220(b) to clarify that a party must not file or serve written interrogatories, requests for production of documents or tangible items, requests for admissions, or responses to any of these with the FAA Hearing Docket or the ALJ. The current provision does not make this clear, as it merely states that a party “is not required” to file these with the ALJ or the FAA Hearing Docket Clerk. This amendment is intended to prevent unnecessary cluttering of the official record in a case. As the rule currently provides, if a discovery dispute arises, the discovery documents must be attached to any related motion so that the ALJ would have the relevant documents to make rulings to resolve the dispute.

Section 13.220(e) currently provides, in part, that a party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is “reasonably calculated” to lead to the discovery of admissible evidence. The FAA proposes changing the “reasonably calculated” standard to the “relevant to any party’s claim or defense” standard consistent with recently amended Rule 26(b) of the Federal Rules of Civil Procedure.

Current § 13.220(k) provides that a party must not serve more than 30 interrogatories, but allows a party to file a motion for permission to serve more than 30 interrogatories. In accordance with current paragraph (k)(2), the ALJ must “grant the motion only if the party shows good cause for the party’s failure to inquire about the information previously and the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.” To clarify this provision, the FAA proposes to amend § 13.220(k)(2) to provide that the ALJ may grant a motion to serve more than 30 interrogatories only upon a showing of good cause. A showing of good cause could include reasons why the party did not inquire about particular information in a previously served set of interrogatories.

Section 13.220(n) currently governs the ALJ’s sanction options for a party’s failure to comply with discovery orders and orders to compel. The FAA proposes removing references to “order to compel” that are in 13.220(n) and its title to streamline the regulation, as it already refers to the broader term “discovery order” which includes an order to compel. The proposed amendment would also remove the term “motion to compel” which was clearly an error in the original drafting, because a party does not have to comply with a motion to compel but instead with a discovery order.

Additionally, the FAA proposes streamlining the text in § 13.220(n) to parallel that in amended § 13.217(f). The amendment would provide that if a party fails to comply with a

discovery order, the ALJ may impose any of the listed sanctions as long as the sanction is proportional to the party's failure to comply with the order. The FAA proposes to replace the current language "limited to the extent of the party's failure to comply" with the phrase "proportional to the party's failure to comply" simply to make the rule less wordy and more readable. The proposed revisions would not restrict the ALJ's authority to adjust the discovery schedule or to direct a party to respond to a discovery request, as that authority is distinct from the ALJ's authority to impose sanctions under § 13.220(n).

#### Public disclosure of information (§ 13.226)

Section 13.226 governs public disclosure of any information contained in the record. Therefore, the FAA proposes amending the title of this section to "Public disclosure of information."

The FAA proposes amending the filing and service provision in § 13.226(a) to align with the amended filing and service instructions in §§ 13.210 and 13.211.

#### Subpoenas (§ 13.228)

Section 13.228 governs subpoenas in civil penalty proceedings. The FAA proposes amending § 13.228(a) and (b), which address requests for subpoenas and motions to quash or modify subpoenas, to align with the proposed filing and service amendments in §§ 13.210 and 13.211.

Section 13.228(a) would also be amended to remove the authority of the FAA Hearing Docket Clerk and the ALJ to issue blank subpoenas upon request by a party. Instead, a party would need to apply for a subpoena from the ALJ as permitted by the relevant governing statutes (i.e., 49 U.S.C. 46104 and 5121). The party applying for the subpoena would be required to show the general relevance and reasonable scope of the evidence sought by the subpoena. This

amendment would place the burden on the requester to prove that a subpoena would be appropriate rather than permit the issuance of a subpoena in blank with the burden to prove the inappropriateness of the subpoena on the person to whom it was directed. Under the proposed change, only the ALJ—and not the FAA Hearing Docket Clerk—could issue the requested subpoena if warranted. This change would harmonize § 13.228(a) with § 13.205(a)(3), which currently provides that it is within the ALJ’s authority to issue subpoenas. It would also harmonize the subpart G subpoena procedures with the proposed amended subpoena rule in subpart D, § 13.57.

The FAA also proposes broadening § 13.228(a) by providing that the subpoena may be served on the holder of requested documents or tangible items as permitted by applicable statute, rather than solely on a witness in a proceeding, as is currently provided in the rule. The FAA proposes this amendment to make clear that under applicable law parties must serve subpoenas for relevant documents or tangible items on the witness or the holder of the documents or tangible items. Finally, the FAA proposes adding time frames for the service and filing of requests for subpoenas that would be applicable absent good cause shown. A request for a subpoena for the purpose of taking depositions would be filed and served at least 15 days before a scheduled deposition. A request for a subpoena for the purpose of requiring the attendance of witnesses or the production of documents or tangible things at a hearing would be filed and served at least 30 days before a scheduled hearing. These amendments would harmonize this provision with subpart D subpoena procedures proposed in § 13.57.

#### Witness fees (§ 13.229)

Section 13.229 governs witness fees in civil penalty proceedings. Section 13.229(a) provides that the party who applies for a subpoena shall pay the associated witness fees, unless otherwise authorized by the ALJ. The FAA would remove this fee-shifting provision which

permits the ALJ to shift the standard witness fee burden away from the party requesting the appearance of a witness. This fee-shifting authority has not been used, it is not supported by an applicable statute, and it runs contrary to the “American Rule”<sup>11</sup> that parties pay their own costs. Under the proposed rule, the party applying for a subpoena would pay the associated witness fees. This same change is proposed in subpart D, § 13.57(d).

The FAA also proposes amending § 13.229(b), which currently provides that a witness who appears at a deposition or hearing (with the exception of an employee of the FAA who appears at the direction of the FAA) 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. The amendment would provide clarification by specifying that these witnesses would be entitled to fees and allowances as provided under 28 U.S.C. 1821, the applicable statute governing the payment of witnesses in judicial proceedings. This change would also harmonize the witness fee provision in subpart G with § 13.57 in subpart D, as revised by this proposal.

#### Record (§ 13.230)

Section 13.230 explains what constitutes the record in civil penalty proceedings and how to examine or acquire a copy of the record. Section 13.230(a) provides that the record in a civil penalty proceeding is comprised of transcripts of the hearing, exhibits received into evidence, motions, applications, requests, and rulings. The FAA proposes amending this section to add that pleadings, transcripts of the prehearing conferences, briefs, responses to motions, applications, and requests are also part of the record. Additionally, the FAA would clarify that only exhibits admitted into evidence are part of the record before an ALJ, although excluded

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<sup>11</sup> See Rule 54(d)(1) of the Federal Rules of Civil Procedure (each party is responsible for paying its own attorney's fees unless specific authority permits otherwise).

evidence may form part of the record on appeal under § 13.225. These proposed amendments would align the rule with current practice.

The FAA also proposes amending § 13.230(b), which provides how a person may examine the record or acquire a copy. This section does not currently distinguish between parties and nonparties. Under current practice, parties may have access to all documents that constitute the record unless ordered otherwise by an ALJ. Current practice is that non-parties, however, may only obtain a copy of the publicly available portions of the record. The public, for example, may not examine or obtain a copy of the portions of the record that the ALJ has ordered to be withheld from public disclosure or that contain financial information. To align the regulation with statutory requirements and existing practice, the FAA proposes specifying that any person may obtain a copy of the releasable portions of the record in accordance with applicable law.

#### Argument before the administrative law judge (§ 13.231)

Section 13.231 provides the rules governing argument before an ALJ in civil penalty proceedings, including arguments during the hearing, final oral argument, and post-hearing briefs. The FAA proposes amending § 13.231 by adding filing and service requirements to align with proposed filing and service amendments in §§ 13.210 and 13.211. This would create consistency with filing and service amendments made throughout subpart G and ensure that FAA Hearing Docket has the complete record.

#### Initial decision (§ 13.232)

Section 13.232 governs the ALJ's initial decision. The FAA would amend § 13.232(d), which currently addresses when the ALJ's initial decision is considered an order assessing civil penalty, by moving this provision to new proposed § 13.232(e). In its place, the FAA would add

a provision that would allow the FAA decisionmaker to treat a motion for reconsideration of an initial decision as a notice of appeal under § 13.233, and if the motion were filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker would issue a briefing schedule, as provided in § 13.218. This reflects current practice, as previously explained in the discussion of proposed amendments to § 13.218. The FAA decisionmaker would not be required to treat such motions as notices of appeal.

Proposed § 13.232(e) would contain the provision currently in § 13.232(d), amended to provide that the ALJ may not assess a civil penalty exceeding the amount sought in the complaint. This limitation is currently provided in § 13.16(j) of subpart C. The FAA proposes moving the requirement to this section as it pertains to a limitation on the ALJ's initial decision.

#### Appeal from initial decision (§ 13.233)

Section 13.233 governs the rules for appealing from an ALJ's initial decision in civil penalty proceedings. The FAA proposes adding references to the filing and service rules in §§ 13.210 and 13.211 throughout § 13.233. The proposed amendment to § 13.233(a) provides an exception to the requirement in proposed § 13.211 that documents be served on the ALJ. The proposed amendment would provide that a party is not required to serve any appellate documents under § 13.233 on the ALJ. This exception includes the notice of appeal, appeal brief, and reply brief.

The FAA also proposes amending § 13.233(c)(1) and (e)(1) to replace references to the "appellate docket clerk" with the FAA decisionmaker, as there is no separate appellate docket clerk. This amendment would clarify that the FAA decisionmaker, rather than the FAA Hearing Docket Clerk, must serve a letter confirming an extension of time to file a brief when the parties agree to the extension.

Sections 13.233(c)(2) and (e)(2) would be amended to permit a party to file a written response to a motion for extension of time filed by another party when the parties do not agree to an extension of time. The current rule does not provide for such responses. The amendment would provide that a response must be filed no later than 10 days after service of the motion for extension of time.

Section 13.233(g) would be amended to require a party to file the original plus only one copy, instead of two copies, of the appeal brief or reply brief with the FAA Hearing Docket. The amendment would also accommodate proposed filing by fax and email as provided in § 13.210, by requiring only one copy of the appeal brief or reply brief.

Finally, § 13.232(j) would be amended to provide that the FAA decisionmaker may not assess a civil penalty that is greater than the amount sought in the complaint as is currently provided in current § 13.16(j), in subpart C of part 13. The FAA proposes moving the requirement to this section where is it more suited as it pertains to a limitation on the FAA decisionmaker's decision.

Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal (§ 13.234)

Section 13.234 governs petitions for reconsideration or modification of a final decision and order of the FAA decisionmaker on appeal. The FAA proposes amending § 13.234(a), (b), and (e) to align with the proposed filing amendments in §§ 13.210 and 13.211. Specifically, under § 13.234(a), a party would file a petition for reconsideration or modification of a final decision and order of the FAA decisionmaker with the FAA Hearing Docket, as there is no appellate docket. The amendment would also accommodate proposed filing by fax and email by requiring only one copy of the petition for review. Additionally, § 13.234(e) would be amended to provide that replies to petitions for reconsideration or modification must be filed with the FAA

Hearing Docket and served on each party as provided under amended §§ 13.210 and 13.211.

This proposed amendment provides an exception to the requirement that documents be served on the ALJ. The proposed amendment to § 13.234(a) would provide that a party is not required to serve any documents under § 13.234 on the ALJ.

Section 13.234(f) describes the effect of filing petitions for reconsideration or modification of a final decision and order of the FAA decisionmaker. The FAA proposes amending this section to provide that the filing of a timely petition would stay the effectiveness of a decision and order of the FAA decisionmaker until final disposition of the petition by the FAA decisionmaker. The amended rule would ensure that the effective date of the Administrator’s final decision and order would be the date that reconsideration or modification is granted, dismissed or denied. This amendment would bring § 13.234(f) in line with the comparable provision of the NTSB’s Rules of Practice (49 CFR 821.50(f)) and current case law. As a result of this amendment, the FAA would remove the provision indicating that such petitions to reconsider or modify a final decision and order of the FAA decisionmaker on appeal do not toll the time allowed for judicial review.

Alternate dispute resolution (§ 13.236)

The FAA proposes adding a new § 13.236 titled “Alternative dispute resolution.” This new section would provide for the voluntary use of mediation, consistent with the DOT’s policy statement on ADR.<sup>12</sup> This proposed section would be similar to the ADR provision proposed in subpart D, § 13.69(a).

H. REDESIGNATION TABLE

<b>Current Section</b>	<b>Proposed Section</b>
<u>Subpart A</u> N/A.....	§13.1

<sup>12</sup> *Department of Transportation Alternative Dispute Resolution Policy Statement*, 67 FR 40367, June 12, 2002.

§13.1.....	§13.2
§13.3.....	§13.3
§13.5(a)-(d), (f)-(k) .....	§13.5
§13.5(a) .....	§13.5(a)
§13.5(b) .....	§13.5(b)
§13.5(c) .....	§13.5(c)
§13.5(d) .....	§13.5(d)
§13.5(e) .....	Removed
§13.5(f) .....	§13.5(e)
§13.5(g) .....	§13.5(f)
§13.5(h) .....	§13.5(f)(1)
§13.5(i) .....	§13.5(f)(2)
§13.5(j) .....	§13.5(g)
§13.5(k) .....	§13.5(h)
§13.7.....	§13.7
<b><u>Subpart B</u></b>	
§13.11.....	§13.11
<b><u>Subpart C</u></b>	
§13.13(a) .....	§13.13(a)
§13.13(b) .....	§13.13(b)
§13.13(c) .....	§13.13(b)(5)
§13.14.....	Removed
§13.15(a) .....	§13.15(a)
§13.15(b) .....	§13.15(b)
§13.15(c)(1).....	§13.15(c)(1)
§13.15(c)(2).....	§13.15(c)(2)(ii), (c)(3), (c)(4)
§13.15(c)(3).....	§13.15(c)(2)(i)
§13.15(c)(4).....	§13.15(c)(2)(i)
§13.15(c)(5).....	§13.15(c)(5)
§13.16(a)-(c).....	§13.16(a)-(c)
§13.16(d) .....	§13.16(e)
§13.16(e) .....	§13.16(d)
§13.16(f)-(j).....	§13.16(f)-(j)
§13.16(k) .....	§13.15(l)
§13.16(l) .....	§13.15(m)
§13.16(m) .....	§13.15(k)
§13.16(n) .....	§13.16(n)
§13.17.....	§13.17
§13.18.....	§13.18
§13.19(a)-(b) .....	§13.19(a)
§13.19(c) .....	§13.19(b)
§13.19(d) .....	Removed
N/A.....	§13.19(c)
N/A.....	§13.19(d)
§13.20(a) .....	§13.20(a)
§13.20(b) .....	§13.20(b)
§13.20(c) .....	§13.20(c)(1)

§13.20(d) .....	§13.20(c)(2)
§13.20(e) .....	§13.20(c)(4)
§13.20(f) .....	§§13.20(c)(3), 13.63(b)
§13.20(g) .....	§13.65(a)
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§13.20(k) .....	§13.45(c)
§13.20(l) .....	§13.20(f)
§13.20(m) .....	Removed
N/A .....	§13.20(e)
§13.21 .....	Removed
§13.23 .....	Removed
§13.25 .....	Removed
§13.27 .....	Removed
§13.29 .....	Removed
<b><u>Subpart D</u></b>	
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§13.33 .....	§13.33(b)
N/A .....	§13.33(a), (c)
§13.35(a) .....	§13.35(a), § 13.43(c)
§13.35(b) .....	§13.35(a)
§13.35(c) .....	§13.35(c)
§13.35(d) .....	§13.35(b)
§13.37(a)-(j) .....	§13.37(a)-(j)
§13.37(k) .....	§13.37(l)
N/A .....	§13.37(m)
§13.39 .....	§13.39
N/A .....	§13.41
§13.43(a) .....	§13.43(a)
N/A .....	§13.43(b), (d), (e)
§13.43(b) .....	§13.43(f)
§13.43(c) .....	§13.43(g)
§13.43(d) .....	§13.43(h)
§13.43(e) .....	§13.43(h)
§13.44(a) .....	§13.45(a)
§13.44(b) .....	§13.45(b), (c)
§13.45 .....	§13.47(b)
§13.47 .....	§13.47(a)
§13.49(a) .....	§13.49(a)(1)
N/A .....	§13.49(b)
§13.49(c) .....	§13.49(a)(2)
§13.49(d) .....	§13.49(c)
§13.49(e) .....	§13.49(d)
§13.49(f) .....	§13.49(e)
§13.49(g) .....	Removed
N/A .....	§13.49(g)

§13.49(h) .....	§13.49(h)
§13.51 .....	§13.51
§13.53 .....	§13.53(d)
N/A .....	§13.53(a)-(c), (e)
§13.55 .....	§13.55
§13.57(a) .....	§13.57(a)
§13.57(b) .....	§13.57(b)
§13.57(c) .....	§13.57(c)
§13.57(d) .....	Removed
N/A .....	§13.57(d)
N/A .....	§13.57(e)
N/A .....	§13.57(f)
§13.59(a) .....	§13.59(a)
§13.59(b) .....	§13.59(b)
§13.59(c) .....	§13.49(f)
§13.61 .....	§13.61
§13.63 .....	§13.63(a)
N/A .....	§13.63(b)-(c)
N/A .....	§13.65
N/A .....	§13.67
N/A .....	§13.69
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§13.77 .....	§13.77
§13.79 .....	§13.63(b)
§13.81(a) .....	§13.81(a)
§13.81(b) .....	Removed
§13.81(c) .....	§13.81(b)
§13.81(d) .....	§13.81(c)
§13.81(e)-(g) .....	Removed
§13.83(a) .....	§13.65(a)
§13.83(b) .....	Removed
§13.83(c) .....	Removed
§13.83(d) .....	§13.65(b)
§13.83(e) .....	§13.65(c)
§13.83(f) .....	Removed
§13.83(g) .....	§13.65(d)
§13.83(h) .....	Removed
§13.85 .....	Removed
§13.87 .....	§13.45(b)-(c)
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§13.115.....	§13.115
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§13.205(b).....	§13.205(a)(10)
N/A.....	§13.205(a)(11)
§13.206.....	§13.206
§13.207.....	§13.207
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§13.209(a).....	§13.209(a)
§13.209(b).....	§13.209(a)-(b), (d), §13.210
§13.209(c).....	§13.209(c)
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§13.210(a).....	§13.210(a), (b), (c), (g)
§13.210(b).....	§13.210(d)
§13.210(c).....	§13.210(e)
§13.210(d).....	§13.210(f)
§13.210(e).....	§13.230(b)
N/A.....	§13.210(h)
§13.211(a).....	§13.211(a)
§13.211(b).....	§13.211(c)
§13.211(c).....	§13.211(d)
§13.211(d).....	§13.211(e)
§13.211(e).....	Removed
§13.211(f).....	§13.211(b)
§13.211(g).....	§13.211(f)
§13.211(h).....	Removed
§13.212.....	§13.212
§13.213.....	§13.213
§13.214.....	§13.214
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§13.216.....	§13.216
§13.217.....	§13.217
§13.218.....	§13.218
N/A.....	§13.218(f)(7)
§13.219.....	§13.219
§13.220.....	§13.220
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§13.232(a).....	§13.232(a)
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§13.232(c).....	§13.232(c)
§13.232(d).....	§13.232(e)
N/A.....	§13.232(d)
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N/A.....	§13.236

**IV. Regulatory Notices and Analyses**

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where

appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

This proposed rule would amend the FAA's investigative and enforcement procedures to update position title references and reflect organizational changes in the Chief Counsel's Office, update outdated statutory and regulatory references, update outdated addresses, and provide uniformity across part 13. The proposal would also reorganize and reword existing provisions to eliminate inconsistencies, clarify ambiguity, increase efficiency, and improve readability. These changes would ensure that the public has current information and rule language that is easier to understand. Another proposed change would require that persons filing documents take reasonable steps to prevent disclosure of certain personally identifiable information via documents filed under Subpart G. A person or party may object to public disclosure of the information by filing a motion as is currently required, but under this proposed rule would have to include both an un-redacted and a redacted copy that indicates the information sought to be withheld. The cost of these changes would be minimal.

The proposed rule would also provide the option for an expedited administrative process to subjects of emergency orders to which § 13.20 applies. Currently, part 13 does not provide for an expedited administrative process for the subjects of such orders. The only recourse for litigating such an order is a direct appeal under 49 U.S.C. 46110 to a U.S. court of appeals, which can be costly and slow. The rule proposes adding the option of an expedited

administrative hearing before a Hearing Officer followed by an expedited administrative appeal to the Administrator. The proposed expedited process is consistent with existing processes for issuing other types of emergency orders and notices of proposed actions. Also, expedited subpart D proceedings are not new, as current subpart E uses subpart D procedures for appeals of hazardous materials emergency orders of compliance issued under current § 13.81(a). Because the proposed process is similar to existing processes, and because there have only been two appeals of such orders since 2012 where it would apply, the costs stemming from the proposed process would be minimal. Finally, an order issued after exhaustion of the proposed expedited administrative process could be appealed to a U.S. court of appeals under 49 U.S.C. 46110.

The proposed expedited administrative process could also lead to an efficient resolution of the matter, without an appeal to a U.S. court of appeals. This could result in lower costs than if the matter had been directly litigated before a U.S. court of appeals, which requires an initial \$500 filing fee versus no initial filing fee in the proposed administrative proceedings. Other potential cost savings might result because of net savings in attorneys' fees, i.e. the difference in cost of hiring an attorney for a potentially lengthy U.S. court of appeals case versus, for the expedited administrative process, either proceeding *pro se* (without an attorney) or hiring an attorney. In addition, the expedited administrative process could resolve the matter in a far shorter time than a U.S. court of appeals, as the Administrator must issue the final order in the proposed expedited administrative process within 80 days. U.S. court of appeals cases, on the other hand, have a median duration of approximately 8 months that could result in protracted litigation costs and business loss. Additionally, a direct appeal to a U.S. court of appeals could require a remand to the agency for it to consider matters that otherwise could have been resolved under the proposed expedited administrative process. After exhaustion of the proposed expedited administrative process, a respondent could still appeal to a U.S. court of appeals. Even if a

respondent resorts to judicial review first, the court of appeals has discretion to require further administrative proceedings, if, for example, the court believes doing so would help develop the record in the case. Therefore, even if the case is not resolved by the proposed expedited administrative process, records developed during that process could later be used by the U.S. court of appeals, reducing the potential costs of a judicial appeal.

As the FAA does not know how many persons subject to emergency orders would opt for expedited hearings and of these how many would end up before a U.S. court of appeals, the FAA cannot conclude how many persons would potentially receive cost savings. However, the FAA expects small cost savings because emergency orders issued under § 13.20 are infrequent. As already mentioned, there have been only two such cases since 2012.

The proposed rule also provides the additional option of using mediation as an alternative dispute resolution procedure in actions under subparts D and G to reduce the potential burden associated with litigating these matters. Litigation could be avoided if mediation results in a mutually agreeable outcome. If mediation is successful and litigation can be avoided there is the potential for cost savings as the cost of mediation is likely to be less than that of litigation.

As with the option for an expedited hearing, mediation may not fully resolve a matter and the respondent may still choose to litigate. However, mediation may reduce the cost of litigation because it can narrow issues and provide for greater cooperation during discovery. The FAA does not know how many parties would participate in a mediation process, or whether the outcome would be lower costs. The annual average number of subpart D and G cases received by the FAA Hearing Docket from 2012 through 2016 was 61. The FAA expects that the number of parties opting for mediation would likely not exceed this number. As the cost savings of opting for mediation is expected to be minimal, the FAA concludes that the total cost savings of providing this option would be minimal.

The proposed rule would also add the less burdensome options of serving and filing a single copy of a document in subpart D and G proceedings by email or fax. This would have the potential of minimal cost savings. Current requirements only allow filing and serving documents by personal delivery or by mail. The party must file an original and a copy of each document and also serve a copy on each party.

The rule also proposes to remove the FAA Hearing Docket Clerk's authority in civil penalty cases under subpart G to issue blank subpoenas upon request by a party and instead requires a party applying for a subpoena to show the general relevance and reasonable scope of the evidence sought by the subpoena. Under the proposal, only the ALJ would have the authority to issue a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought by the subpoena. The burden would be on the party requesting the subpoena to prove it is appropriate. Because it could avoid subpoenas that impose irrelevant and burdensome requests for testimony, documents, and tangible things, it is potentially cost saving. From the start of 2014 through the end of 2017, the FAA Hearing Docket Clerk has issued 40 subpoenas, and if some unnecessary and irrelevant subpoenas could be avoided in the future there might be minimal cost savings.

Finally, section 13.210(e)(1) currently explains that materials filed in the FAA Hearing Docket in civil penalty adjudications are made publicly available on the Federal Docket Management System's (FDMS) website, [www.regulations.gov](http://www.regulations.gov). For purposes of administrative efficiency, the FAA proposes to discontinue using the FDMS website for such materials.<sup>13</sup> Based on current billing, the FAA estimates the cost savings would be approximately \$50,000 per year

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<sup>13</sup> Final decisions will continue to be made available on the FAA's website and through commercial legal reporting services.

to discontinue using the FDMS website for part 13 adjudication docket materials.<sup>14</sup> Over a 10-year period of analysis this cost savings would total about \$500,000 or about \$351,179 present value at a 7% discount rate.

The FAA concludes that this proposed rule is a minimal cost rule based on the potential for minimal cost savings as explained herein.

The FAA has, therefore, determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides

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<sup>14</sup> Savings based on the portion of FAA’s total annual billing costs for dockets and FDMS services attributable to adjudication materials.

that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule, if promulgated is likely to affect a substantial number of small entities, but as it is a minimal cost rule it is not expected to have a significant economic impact on a substantial number of small entities.

The rule would codify current practice, and rewrite and reorganize a part of the CFR to make it more understandable. It would update outdated references and addresses. It would add less burdensome and faster-moving administrative appeal options. It would require that persons filing documents take reasonable steps to prevent disclosure of certain personally identifiable information via those documents, and that motions to withhold information from the public be accompanied by an un-redacted and a redacted copy of the document. It would also add less burdensome options for serving and filing papers. It could eliminate some requests for subpoenas that otherwise would cost parties or subpoenaed persons time and money to defend against. The FAA has determined the proposed rule is a minimal cost rule with the potential for cost savings.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b) and based on the foregoing, the head of the FAA certifies that this proposed rule, if promulgated, will not result in a significant economic impact on a substantial number of small entities.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing

standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same minimal costs and minimal cost savings on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it

impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action does not propose new information collection requirements. Currently, the public may voluntarily submit information to the FAA as provided in Section 13.5 of title 14 of the CFR. To address this voluntary information collection, the FAA has submitted this information collection assessment to OMB for its review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Summary: Section 13.5 of title 14 of the CFR currently allows any person to file a complaint with the FAA Administrator regarding a person's violation of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes. Thus, the overall burden associated with submission and processing of these complaints is not new. It is also optional, as there is no obligation for any individual file a formal complaint.

As laid out in 14 CFR 13.5(b), a formal complaint must be in writing, state that it is a complaint seeking an appropriate order or enforcement action, identify the subjects of the complaint, state the specific laws that each subject violated, provide a concise but complete statement of the facts substantiating the violations, and include the name, address, telephone number, email, and signature of the person filing the complaint. After the FAA confirms that the complaint meets these requirements, it sends the complaint to the subjects of the complaint and gives them an opportunity to submit a written answer. If a complaint does not meet these requirements, it is considered a report under 14 CFR 13.2.

Use: The FAA uses the information in the complaint and answer to determine if the matter warrants investigation or action. If it does, the FAA proceeds with an investigation. If not, the FAA dismisses the complaint and gives the reason for dismissal in writing to both the person who filed the complaint and the subjects of the complaint.

Respondents: Formal complaints are typically submitted by a single individual or organization. Almost all formal complaints are about evenly split between three basic categories (complainant listed first): individual vs. individual, individual vs. organization, and organization vs. organization.

Frequency: We estimate this collection of information would result in 7 formal complaints per year.<sup>15</sup>

Annual Burden Estimate: We estimate that it would take an individual about 4 hours to write a formal complaint acceptable under § 13.5. Most of this time would be the research required to determine which laws the subject of the complaint supposedly violated. The second largest amount of time would be devoted to writing the “concise but complete” statement of facts substantiating the complaint.

The FAA estimates there would be 7 complaints filed per year by 7 respondents. Each complaint would take no more than 4 hours to complete. The annual hourly burden would be 28 hours for the public to submit formal complaints (7 complaints x 4 hours = 28 hours).

After the FAA reviews the complaint and confirms it meets the requirements, each subject of the complaint would have an opportunity to submit a written answer. We estimate this would take the subject 4 hours. The annual hourly burden to the public would be another 28 hours for the subject of the complaint to provide a written answer (7 written answers x 4 hours = 28 hours).<sup>16</sup> The total annual hourly burden to the public would be 56 hours.

Since a complainant and a subject of a complaint could be employed in any occupation, we selected a mean hourly wage rate for all occupations in the U.S. The U.S. Bureau of Labor

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<sup>15</sup> This estimate is based on the number of formal complaints the FAA has received in the last three years. Between calendar years 2015 and 2017, 18 formal complaints were submitted to the FAA: 3 in 2015, 7 in 2016, and 8 in 2017.

<sup>16</sup> Assumes each formal complaint would meet the requirements as laid out in 14 CFR 13.5(b), so the FAA can send the complaint to the subject of the complaint to give them an opportunity to submit a written answer.

Statistics estimates of the mean hourly wage rate of all occupations was \$24.34 in May 2017.<sup>17</sup> The FAA estimates the total burdened hourly wage rate is \$35.69 when including full employee benefits.<sup>18</sup> The total annual cost burden to the public would be about \$1,999 (\$35.69 x 56 hours).

The complaint would take an FAA attorney no more than 4 hours to review to confirm it meets the requirements as laid out in 14 CFR 13.5(b). The annual time burden for the FAA would be 28 hours. The FAA would take an additional hour to send the complaint to the subjects of that complaint, which would add an additional 7 hours. The FAA would then take another estimated 3 hours to determine if an investigation would be necessary, adding an additional 21 hours to the FAA annual burden. The total annual burden would be 56 hours for the FAA.

We assume an FAA hourly wage rate of \$63.51.<sup>19</sup> We estimate the total burdened FAA hourly wage rate to be \$86.54 when including full civilian employee benefits.<sup>20</sup> The total annual cost burden to the FAA to review and process the complaint would be \$4,846 (\$86.54 x 56 = \$4,846).

We estimate the total combined (public + FAA) annual burden and cost of the information requirements to be about 112 hours and \$6,845. The total combined burden and cost over three years is about 336 hours and \$20,535. This annual burden and cost already exists

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<sup>17</sup> Source: U.S. Bureau of Labor Statistics, May 2017 National Occupational Employment and Wage Estimates, see Occupational Code #00-0000, All Occupations ([https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000)).

<sup>18</sup> Derived from the U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation—March 2018 (<https://www.bls.gov/news.release/pdf/ecec.pdf>, June 8, 2018 release), which indicates that wages and salaries were 68.2% of total employee compensation (salary and benefits) providing a fringe benefit factor of about 1.4663 ( $=1 \div 0.682$ ). We use this factor to estimate the total “burdened” employee compensation (salary and benefits) hourly wage rate of \$35.69 ( $=\$24.34 \times 1.4663$ ).

<sup>19</sup> We assume that 75% of the work would be performed by an FAA attorney at a grade level 14 step 5 hourly wage of \$60.83 and 25% by an FAA attorney at a grade level 15 step 5 hourly wage of \$71.56 (wages based on U.S. Office of Personnel Management General Schedule Salary Data).

<sup>20</sup> We use a civilian fringe benefit cost factor of 36.25% (or 1.3625) to estimate the total “burdened” FAA employee compensation (salary and benefits) hourly wage rate of \$86.54 ( $=\$63.51 \times 1.3625$ ). The civilian fringe benefit cost factor is based on guidance from the U.S. Office of Management and Budget (<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2008/m08-13.pdf>).

under the current regulations and it is optional, as there is no obligation for any individual to file a formal complaint.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the ADDRESSES section at the beginning of this preamble by *[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]*.

Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

V. **Executive Order Determinations**

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary

differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

**VI. Additional Information**

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data or rationale. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies); or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

### **List of Subjects**

14 CFR part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous material transportation, Investigations, Law enforcement, Penalties.

### **The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter 1 of title 14, Code of Federal Regulations as follows:

#### **PART 13 – INVESTIGATIVE AND ENFORCEMENT PROCEDURES**

1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121-5124, 5127 40113-40114, 44103-44106, 44701-44703, 44709-44710, 44713, 46101-46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304-46316, 46318, 46501-46502, 46504-46507, 47106, 47107, 47111, 47122, 47306, 47531-47532; 49 CFR 1.83.

2. Revise Subpart A to read as follows:

**SUBPART A—GENERAL AUTHORITY TO RE-DELEGATE AND INVESTIGATIVE PROCEDURES**

**Sec.**

13.1 Re-delegation.

13.2 Reports of violations.

13.3 Investigations (general).

13.5 Formal complaints.

13.7 Records, documents and reports.

**§ 13.1 Re-delegation**

Unless otherwise specified, the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement may re-delegate the authority delegated to them under this part.

**§ 13.2 Reports of violations.**

(a) Any person who knows of any violation of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes, should report the violation to FAA personnel.

(b) FAA personnel will review each report made under this section to determine whether any additional investigation or action is warranted.

**§ 13.3 Investigations (general).**

(a) The Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) The Administrator may delegate the authority to conduct investigations to the various services and offices for matters within their respective areas.

(c) The Administrator's authority to issue orders, conduct investigations, order depositions, hold hearings, issue subpoenas, and require the production of relevant documents, records, and property, is delegated to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement.

(d) A complaint against the sponsor, proprietor, or operator of a federally assisted airport involving violations of the legal authorities listed in § 16.1 of this chapter must be filed in accordance with the provisions of part 16 of this chapter.

### **§ 13.5 Formal complaints.**

(a) Any person may file a complaint with the Administrator with respect to a violation by a person of any requirement under 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes. This section does not apply to complaints against the Administrator or employees of the FAA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint seeking an appropriate order or other enforcement action;

(2) Be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Formal Complaint Clerk (AGC-300), 800 Independence Avenue, S.W., Washington, DC 20591;

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the statute, rule, regulation, or order that the complainant believes were violated;

(4) Contain a concise but complete statement of the facts relied upon to substantiate each allegation;

(5) State the name, address, telephone number, and email of the person filing the complaint; and

(6) Be signed by the person filing the complaint or an authorized representative.

(c) A complaint that does not meet the requirements of paragraph (b) of this section will be considered a report under § 13.2.

(d) The FAA will send a copy of a complaint that meets the requirements of paragraph (b) of this section to the subject(s) of the complaint by certified mail.

(e) A subject of the complaint may serve a written answer to the complaint to the Formal Complaint Clerk at the address specified in paragraph (b)(2) of this section no later than 20 days after service of a copy of the complaint. For purposes of this paragraph, the date of service is the date on which the FAA mailed a copy of the complaint to the subject of the complaint.

(f) After the subject(s) of the complaint have served a written answer or after the allotted time to serve an answer has expired, the Administrator will determine if there are reasonable grounds for investigating the complaint, and—

(1) If the Administrator determines that a complaint does not state facts that warrant an investigation or action, the complaint may be dismissed without a hearing and the reason for the dismissal will be given, in writing, to the person who filed the complaint and the subject(s) of the complaint; or

(2) If the Administrator determines that reasonable grounds exist, an informal investigation may be initiated or an order of investigation may be issued in accordance with subpart F of this part, or both. The subject(s) of a complaint will be advised which official has been delegated the responsibility under § 13.3(b) or (c), as applicable, for conducting the investigation.

(g) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(h) The complaint and other records relating to the disposition of the complaint are maintained in the Formal Complaint Docket (AGC-300), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591. Any interested person may examine any docketed material at that office at any time after the docket is established, except material that is required to be withheld from the public under applicable law, and may obtain a copy upon paying the cost of the copy.

### **§ 13.7 Records, documents and reports.**

Each record, document, and report that FAA regulations require to be maintained, exhibited, or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section which imposes the requirement, the records, documents, and reports may be used in any civil penalty action, certificate action, or other legal proceeding.

3. Revise subpart B to read as follows:

## **SUBPART B—ADMINISTRATIVE ACTIONS**

### **§ 13.11 Administrative disposition of certain violations.**

(a) If, after an investigation, FAA personnel determine that an apparent violation of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes, does not require legal enforcement action, an appropriate FAA official may take administrative action to address the apparent violation.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may take the form of—

(1) A Warning Notice that recites available facts and information about the incident or condition and indicates that it may have been a violation; or

(2) A Letter of Correction that states the corrective action the apparent violator has taken or agrees to take. If the apparent violator does not complete the agreed corrective action, the FAA may take legal enforcement action.

4. Revise subpart C to read as follows:

#### **SUBPART C—LEGAL ENFORCEMENT ACTIONS**

##### **Sec.**

13.13 Consent orders.

13.14 [Removed and Reserved]

13.15 Civil penalties: Other than by administrative assessment.

13.16 Civil Penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.

13.17 Seizure of aircraft.

13.18 Civil penalties: Administrative assessment against an individual acting as a pilot, flight engineer, mechanic, or repairman.

13.19 Certificate actions appealable to the National Transportation Safety Board.

13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.

13.21 [Removed and Reserved]

13.23 [Removed and Reserved]

13.25 [Removed and Reserved]

13.27 [Removed and Reserved]

13.29 [Removed and Reserved]

**§ 13.13 Consent orders.**

(a) The Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement may issue a consent order to resolve any matter with a person that may be subject to legal enforcement action.

(b) A person that may be subject to legal enforcement action may propose a consent order.

The proposed consent order must include—

(1) An admission of all jurisdictional facts;

(2) An express waiver of the right to further procedural steps and of all rights to legal review in any forum;

(3) An express waiver of attorney's fees and costs;

(4) If a notice or order has been issued prior to the proposed consent order, an incorporation by reference of the notice or order and an acknowledgment that the notice or order may be used to construe the terms of the consent order; and

(5) If a request for hearing or appeal is pending in any forum, a provision that the person will withdraw the request for hearing or notice of appeal.

**§ 13.14 [Reserved].**

**§ 13.15 Civil penalties: Other than by administrative assessment.**

(a) The FAA uses the procedures in this section when it seeks a civil penalty other than by the administrative assessment procedures in §§ 13.16 or 13.18.

(b) The authority of the Administrator to seek a civil penalty, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions sought by the Administrator is delegated to the Chief Counsel, each Deputy

Chief Counsel, and the Assistant Chief Counsel for Enforcement. This delegation applies to cases involving one or more of the following:

(1) An amount in controversy in excess of:

(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) \$50,000, if the violation was committed by an individual or small business concern.

(2) An in rem action, seizure of aircraft subject to lien, suit for injunctive relief, or for collection of an assessed civil penalty.

(c) The Administrator may compromise any civil penalty proposed under this section, before referral to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Administrator, through the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement sends a civil penalty letter to the person charged with a violation. The civil penalty letter contains a statement of the charges, the applicable law, rule, regulation, or order, and the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

(2) Not later than 30 days after receipt of the civil penalty letter, the person cited with an alleged violation may respond to the civil penalty letter by—

(i) Submitting electronic payment, a certified check, or money order in the amount offered by the Administrator in the civil penalty letter. The agency attorney will send a letter to the person charged with the violation stating that payment is accepted in full settlement of the civil penalty action; or

(ii) Submitting one of the following to the agency attorney:

(A) Written material or information that may explain, mitigate, or deny the violation or that may show extenuating circumstances; or

(B) A written request for an informal conference to discuss the matter with the agency attorney and to submit any relevant information or documents that may explain, mitigate, or deny the violation or that may show extenuating circumstances.

(3) The documents, material, or information submitted under subparagraph (c)(2)(ii) of this section may include support for any claim of inability to pay the civil penalty in whole or in part, or for any claim of small business status as defined in 49 U.S.C. 46301(i).

(4) The Administrator will consider any material or information submitted under paragraph (c)(2)(ii) of this section to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(5) If the parties cannot agree to compromise the civil penalty, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a U.S. district court to prosecute and collect the civil penalty.

**§ 13.16 Civil Penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.**

(a) The FAA uses the procedures in this section when it assesses a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman for a violation cited in the first sentence of 49 U.S.C. 46301(d)(2), or in 49 U.S.C. 47531, or any implementing rule, regulation or order, except when the U.S. district courts have exclusive jurisdiction.

(b) The U.S. district courts have exclusive jurisdiction of any civil penalty action initiated by the FAA for violations described in paragraph (a) of this section if—

(1) The amount in controversy is more than \$400,000 for a violation committed by a person other than an individual or small business concern;

(2) The amount in controversy is more than \$50,000 for a violation committed by an individual or a small business concern;

(3) The action is in rem or another action in rem based on the same violation has been brought;

(4) The action involves an aircraft subject to a lien that has been seized by the Government;  
or

(5) Another action has been brought for an injunction based on the same violation.

(c) *Hazardous materials violations.* An order assessing a civil penalty for a violation under 49 U.S.C. chapter 51, or a rule, regulation, or order issued under that chapter is issued only after the following factors have been considered:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) With respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) Other matters that justice requires.

(d) *Delegation of authority.* The authority of the Administrator is delegated to each Deputy Chief Counsel and the Assistant Chief Counsel for Enforcement, as follows:

(1) Under 49 U.S.C. 46301(d), 47531, and 5123, and 49 CFR 1.83, to initiate and assess civil penalties for a violation of those statutes or a rule, regulation, or order issued under those provisions;

(2) Under 49 U.S.C. 5123, 49 CFR 1.83, 49 U.S.C. 46301(d), and 49 U.S.C. 46305, to refer cases to the Attorney General of the United States or a delegate of the Attorney General for collection of civil penalties;

(3) Under 49 U.S.C. 46301(f), to compromise the amount of a civil penalty imposed; and

(4) Under 49 U.S.C. 5123 (e) and (f) and 49 CFR 1.83, to compromise the amount of a civil penalty imposed.

(e) *Order assessing civil penalty.*

(1) An order assessing civil penalty may be issued for a violation described in paragraphs (a) or (c) of this section, or as otherwise provided by statute, after notice and opportunity for a hearing, when:

(i) A person charged with a violation agrees to pay a civil penalty for a violation; or

(ii) A person charged with a violation does not request a hearing under paragraph (g)(2)(ii) of this section within 15 days after receipt of a final notice of proposed civil penalty.

(2) The following also serve as an order assessing civil penalty:

(i) An initial decision or order issued by an administrative law judge as described in § 13.232(e).

(ii) A decision or order issued by the FAA decision maker as described in § 13.233(j).

(f) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation, the designated agent for the person, or if there is no such designated agent, the president of the company charged with a violation. In response to a notice of proposed civil penalty, a company may designate in writing another person to receive documents in that civil penalty action. The notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation may—

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or compromise order under paragraph (n) of this section may be issued in that amount;

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information or documents; or

(3) Request a hearing conducted in accordance with subpart G of this part.

(g) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty will be sent to the person charged with a violation, the designated agent for the person under 49 U.S.C. 46103, the designated agent named in accordance with paragraph (f) of this section, or the president of the company charged with a violation. The final notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during informal procedures, may modify an allegation or a proposed civil penalty contained in a notice of proposed civil penalty.

(1) A final notice of proposed civil penalty may be issued—

(i) If the person charged with a violation fails to respond to the notice of proposed civil penalty within 30 days after receipt of that notice; or

(ii) If the parties participated in any procedures under paragraph (f)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation may do one of the following—

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order under paragraph (n) of this section may be issued in that amount; or

(ii) Request a hearing conducted in accordance with subpart G of this part.

(h) *Request for a hearing.* Any person requesting a hearing, under paragraph (f)(3) or paragraph (g)(2)(ii) of this section must file the request with the FAA Hearing Docket Clerk and serve the request on the agency attorney in accordance with the requirements in subpart G of this part.

(i) *Hearing.* The procedural rules in subpart G of this part apply to the hearing.

(j) *Appeal.* Either party may appeal the administrative law judge's initial decision to the FAA decisionmaker under the procedures in subpart G of this part. The procedural rules in subpart G of this part apply to the appeal.

(k) *Judicial Review.* A person may seek judicial review only of a final decision and order of the FAA decisionmaker in accordance with § 13.235.

(l) *Payment.*

(1) A person must pay a civil penalty by:

(i) Sending a certified check or money order, payable to the Federal Aviation Administration, to the FAA office identified in the notice of proposed civil penalty, the final notice of proposed civil penalty, or the order assessing civil penalty, or

(ii) Making an electronic payment according to the directions specified in the notice of proposed civil penalty, the final notice of proposed civil penalty, or the order assessing civil penalty.

(2) The civil penalty must be paid within 30 days after service of the order assessing civil penalty, unless otherwise agreed to by the parties. In cases where a hearing is requested, an appeal to the FAA decisionmaker is filed, or a petition for review of the FAA decisionmaker's decision is filed in a U.S. court of appeals, the civil penalty must be paid within 30 days after all litigation in the matter is completed and the civil penalty is affirmed in whole or in part.

(m) *Collection of civil penalties.* If an individual does not pay a civil penalty imposed by an order assessing civil penalty or other final order, the Administrator may take action to collect the penalty.

(n) *Compromise.* The FAA may compromise the amount of any civil penalty imposed under this section under 49 U.S.C. 5123(e), 46301(f), or 46318 at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) When a civil penalty is compromised with a finding of violation, an agency attorney issues an order assessing civil penalty.

(2) When a civil penalty is compromised without a finding of violation, the agency attorney issues a compromise order that states the following:

(i) The person has paid a civil penalty or has signed a promissory note providing for installment payments.

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

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

### **§ 13.17 Seizure of aircraft.**

(a) A State or federal law enforcement officer, or a Federal Aviation Administration safety inspector, authorized in an order of seizure issued by the Regional Administrator of the region, or by the Chief Counsel, may seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or the individual commanding the aircraft.

(b) Each person seizing an aircraft under this section places it in the nearest available and adequate public storage facility in the judicial district in which it was seized.

(c) The Regional Administrator or Chief Counsel, without delay, sends a written notice and a copy of this section to the registered owner of the seized aircraft and to each other person shown by FAA records to have an interest in it, stating the—

(1) Time, date, and place of seizure;

(2) Name and address of the custodian of the aircraft;

(3) Reasons for the seizure, including the violations alleged or proven to have been committed; and

(4) Amount that may be tendered as—

(i) A compromise of a civil penalty for the alleged violation; or

(ii) Payment for a civil penalty imposed for a proven violation.

(d) The Chief Counsel or Assistant Chief Counsel for Enforcement immediately sends a report to the United States Attorney for the judicial district in which it was seized, requesting the United States Attorney to institute proceedings to enforce a lien against the aircraft.

(e) The Regional Administrator or Chief Counsel directs the release of a seized aircraft when—

(1) The alleged violator pays a civil penalty or an amount agreed upon in compromise, and the costs of seizing, storing, and maintaining the aircraft;

(2) The aircraft is seized under an order of a federal court in proceedings in rem initiated under 49 U.S.C. 46305 to enforce a lien against the aircraft, or the United States Attorney for the judicial district concerned notifies the FAA that the United States Attorney refuses to institute those proceedings; or

(3) A bond in the amount and with the sureties prescribed by the Chief Counsel or the Assistant Chief Counsel for Enforcement is deposited, conditioned on payment of the penalty or the compromise amount, and the costs of seizing, storing, and maintaining the aircraft.

**§ 13.18 Civil penalties: Administrative assessment against an individual acting as a pilot, flight engineer, mechanic, or repairman.**

(a) *General.* (1) This section applies to each action in which the FAA seeks to assess a civil penalty by administrative procedures against an individual acting as a pilot, flight engineer, mechanic, or repairman under 49 U.S.C. 46301(d)(5) for a violation listed in 49 U.S.C. 46301(d)(2). This section does not apply to a civil penalty assessed for a violation of 49 U.S.C. chapter 51, or a rule or order issued thereunder.

(2) *District court jurisdiction.* Notwithstanding the provisions of paragraph (a)(1) of this section, the U.S. district courts have exclusive jurisdiction of any civil penalty action involving an individual acting as a pilot, flight engineer, mechanic, or repairman for violations described in that paragraph, or under 49 U.S.C. 46301(d)(4), if:

(i) The amount in controversy is more than \$50,000.

(ii) The action involves an aircraft subject to a lien that has been seized by the government; or

(iii) Another action has been brought for an injunction based on the same violation.

(b) *Definitions.* As used in this part, the following definitions apply:

(1) *Flight engineer* means an individual who holds a flight engineer certificate issued under part 63 of this chapter.

(2) *Individual acting as a pilot, flight engineer, mechanic, or repairman* means an individual acting in such capacity, whether or not that individual holds the respective airman certificate issued by the FAA.

(3) *Mechanic* means an individual who holds a mechanic certificate issued under part 65 of this chapter.

(4) *Pilot* means an individual who holds a pilot certificate issued under part 61 of this chapter.

(5) *Repairman* means an individual who holds a repairman certificate issued under part 65 of this chapter.

(c) *Delegation of authority.* The authority of the Administrator is delegated to each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement, as follows:

(1) To initiate and assess civil penalties under 49 U.S.C. 46301(d)(5);

(2) To refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties; and

(3) To compromise the amount of a civil penalty under 49 U.S.C. 46301(f).

(d) *Notice of proposed assessment.* A civil penalty action is initiated by sending a notice of proposed assessment to the individual charged with a violation specified in paragraph (a) of this section. The notice of proposed assessment contains a statement of the charges and the amount of the proposed civil penalty. The individual charged with a violation may do the following:

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order of assessment or a compromise order will be issued in that amount.

(2) Answer the charges in writing by submitting information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances.

(3) Submit a written request to reduce the proposed civil penalty, stating the amount of reduction and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay.

(4) Submit a written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents.

(5) Request that an order of assessment be issued so that the individual charged may appeal to the National Transportation Safety Board.

(e) *Failure to respond to notice of proposed assessment.* An order of assessment may be issued if the individual charged with a violation fails to respond to the notice of proposed assessment within 15 days after receipt of that notice.

(f) *Order of assessment.* An order of assessment, which imposes a civil penalty, may be issued for a violation described in paragraph (a) of this section after notice and an opportunity to answer any charges and be heard as to why such order should not be issued.

(g) *Appeal.* Any individual who receives an order of assessment issued under this section may appeal the order to the National Transportation Safety Board. The appeal stays the effectiveness of the Administrator's order.

(h) *Judicial review.* A party may seek judicial review only of a final decision and order of the National Transportation Safety Board under 49 U.S.C. 46301(d)(6), 46301(g), and 46110. Neither an initial decision nor an order issued by an administrative law judge that has not been appealed to the National Transportation Safety Board, nor an order compromising a civil penalty action, may be appealed under any of those sections.

(i) *Compromise.* The FAA may compromise any civil penalty imposed under this section at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) When a civil penalty is compromised with a finding of violation, an agency attorney issues an order of assessment.

(2) When a civil penalty is compromised without a finding of violation, the agency attorney issues a compromise order of assessment that states the following:

(i) The individual has paid a civil penalty or has signed a promissory note providing for installment payments;

(ii) The FAA makes no finding of violation; and

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(j) *Payment.* (1) An individual must pay a civil penalty by:

(i) Sending a certified check or money order, payable to the Federal Aviation Administration, to the FAA office identified in the order of assessment, or

(ii) Making an electronic payment according to the directions specified in the order of assessment.

(2) The civil penalty must be paid within 30 days after service of the order of assessment, unless an appeal is filed with the National Transportation Safety Board. The civil penalty must be paid within 30 days after a final order of the Board or a court of appeals affirms the order of assessment in whole or in part.

(k) *Collection of civil penalties.* If an individual does not pay a civil penalty imposed by an order of assessment or other final order, the Administrator may take action provided under the law to collect the penalty.

**§ 13.19 Certificate actions appealable to the National Transportation Safety Board.**

(a) The Administrator may issue an order amending, modifying, suspending, or revoking all or part of any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate if as a result of a reinspection, reexamination, or other investigation, the Administrator determines that the public interest and safety in air commerce requires it, if a certificate holder has violated an aircraft noise or sonic boom standard or regulation prescribed under 49 U.S.C. 44715(a), or if the holder of the certificate is convicted of violating 16 U.S.C. 742j-1(a).

(b) Before issuing a non-immediately effective order to amend, modify, suspend, or revoke a type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, air agency certificate, or to revoke an aircraft certificate of registration because the aircraft was used to carry out or facilitate an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year and the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity—

(1) The agency attorney issues a notice advising the certificate holder or aircraft owner of the charges or other reasons upon which the Administrator bases the proposed action and allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, modified, or revoked.

(2) In response to a notice of proposed certificate action described in paragraph (b)(1) of this section, the certificate holder or aircraft owner, within 15 days of the date of receipt of the notice, may—

(i) Surrender the certificate and waive any right to contest or appeal the charged violations and sanction, in which case the Administrator will issue an order;

(ii) Answer the charges in writing by submitting information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that the proposed sanction is not warranted by the circumstances;

(iii) Submit a written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents; or

(iv) Request that an order be issued in accordance with the notice of proposed certificate action so that the certificate holder or aircraft owner may appeal to the National Transportation Safety Board.

(c) In the case of an emergency order amending, modifying, suspending, or revoking a type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate, a person affected by the immediate effectiveness of the Administrator's order may petition the National Transportation Safety Board for a review of the Administrator's determination that an emergency exists.

(d) A person may not petition the National Transportation Safety Board for a review of the Administrator's determination that an emergency exists where the action is based on the circumstances described in paragraphs (d)(1), (d)(2) or (d)(3) of this section.

(1) The revocation of an individual's airman certificates for the reasons stated in paragraph (d)(1)(i) or (d)(1)(ii) of this section:

(i) A conviction under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) An aircraft was used to commit, or facilitate the commission of the offense; and

(B) The individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(ii) Knowingly carrying out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year; and—

(A) An aircraft was used to carry out or facilitate the activity; and

(B) The individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(2) The revocation of a certificate of registration for an aircraft, and any other aircraft the owner of that aircraft holds, if the Administrator finds that—

(i) The aircraft was used to carry out or facilitate an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year; and

(ii) The owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (d)(2)(i) of this section.

(3) The revocation of an airman certificate, design organization certificate, type certificate, production certificate, airworthiness certificate, air carrier operating certificate, airport operating certificate, air agency certificate, or air navigation facility certificate if the Administrator finds that the holder of the certificate or an individual who has a controlling or ownership interest in the holder—

(i) Was convicted in a court of law of a violation of a law of the United States relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material; or

(ii) Knowingly, and with the intent to defraud, carried out or facilitated an activity described in paragraph (d)(3)(i) of this section.

**§ 13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.**

(a) This section applies to all of the following:

(1) Orders of compliance;

(2) Cease and desist orders;

(3) Orders of denial;

(4) Orders suspending or revoking a certificate of registration (but not revocation of a certificate of registration because the aircraft was used to carry out or facilitate an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year and the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity); and

(5) Other orders issued by the Administrator to carry out the provisions of the federal aviation statute codified at 49 U.S.C. subtitle VII for which there is no administrative process provided by statute, rule, regulation, or order.

(b)(1) Prior to the issuance of a non-immediately effective order covered by this section, the person who would be subject to the order is provided with notice, advising the person of the charges or other reasons upon which the proposed action is based, and the provisions in paragraph (c) of this section apply.

(2) If the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action and issues an order covered by this section that is immediately effective, the provisions of paragraph (d) of this section apply.

(c) *Non-Emergency Procedures.* (1) Within 30 days after service of the notice, the person subject to the notice may:

(i) Submit a written reply;

(ii) Agree to the issuance of the order as proposed in the notice of proposed action, waiving any right to contest or appeal the agreed-upon order issued under this option in any administrative or judicial forum;

(iii) Submit a written request for an informal conference to discuss the matter with an agency attorney; or

(iv) Request a hearing in accordance with the non-emergency procedures of subpart D of this part.

(2) After an informal conference is held or a reply is filed, if the agency attorney notifies the person that some or all of the proposed agency action will not be withdrawn, the person may, within 10 days after receiving the agency attorney's notification, request a hearing on the parts of the proposed agency action not withdrawn, in accordance with the non-emergency procedures of Subpart D of this part.

(3) If a hearing is requested in accordance with paragraph (d)(1)(iv) or (d)(2) of this section, the non-emergency procedures of Subpart D of this part apply.

(4) Failure to request a hearing within the periods provided in paragraphs (d)(1)(iv) or (d)(2) of this section:

(i) Constitutes a waiver of the right to a hearing and appeal; and

(ii) Authorizes the agency to make any appropriate findings of fact and to issue an appropriate order without further notice or proceedings.

(d) *Emergency Procedures.* (1) If the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator issues simultaneously:

(i) An immediately effective order that expires 80 days after the date of issuance and sets forth the charges or other reasons upon which the order is based.

(ii) A notice of proposed action that:

(A) Sets forth the charges or other reasons upon which the notice of proposed action is based; and

(B) Advises that within 10 days after service of the notice, the person may appeal the notice by requesting an expedited hearing in accordance with the emergency procedures of subpart D of this part.

(2) The Administrator will serve the immediately effective order and the notice of proposed action together by personal or overnight delivery and by certified or registered mail to the person subject to the order and notice of proposed action.

(3) Failure to request a hearing challenging the notice of proposed action under the expedited procedures in subpart D within 10 days after service of the notice:

(i) Constitutes a waiver of the right to a hearing and appeal under subpart D; and

(ii) Authorizes the Administrator, without further notice or proceedings, to make appropriate findings of fact, issue an immediately effective order without expiration, and withdraw the 80-day immediately effective order.

(4) The filing of a request for hearing under subpart D does not stay the effectiveness of the 80-day immediately effective order issued under this section.

(e) The authority of the Administrator under this section is delegated to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement.

§ 13.21 [Removed and Reserved]

§ 13.23 [Removed and Reserved]

§ 13.25 [Removed and Reserved]

§ 13.27 [Removed and Reserved]

§ 13.29 [Removed and Reserved]

5. Revise subpart D to read as follows:

**SUBPART D—RULES OF PRACTICE FOR FAA HEARINGS**

**Sec.**

13.31 Applicability.

13.33 Parties, representatives, and notice of appearance.

13.35 Request for hearing, complaint, and answer.

13.37 Hearing Officer: Assignment and powers.

13.39 Disqualification of Hearing Officer.

13.41 Separation of functions and prohibition on ex parte communications.

13.43 Service and filing of pleadings, motions, and documents.

13.44 [Removed and Reserved]

13.45 Computation of time and extension of time.

13.47 Withdrawal or amendment of the complaint, answer or other filings.

13.49 Motions.

13.51 Intervention.

13.53 Discovery.

13.55 Notice of hearing.

13.57 Subpoenas and witness fees.

13.59 Evidence.

- 13.61 Argument and submittals.
- 13.63 Record, decision, and aircraft registration proceedings.
- 13.65 Appeal to the Administrator, reconsideration and judicial review.
- 13.67 Procedures for expedited proceedings.
- 13.69 Other matters: Alternative dispute resolution, standing orders, and forms.

**§13.31 Applicability.**

This subpart applies to proceedings in which a hearing has been requested in accordance with §§ 13.20 or 13.75. Hearings under this subpart are considered informal and are provided through the Office of Adjudication.

**§13.33 Parties, representatives, and notice of appearance.**

(a) *Parties.* Parties to proceedings under this subpart include the following: complainant, respondent, and where applicable, intervenor.

(1) Complainant is the FAA Office that issued the notice of proposed action under the authorities listed in § 13.31.

(2) Respondent is the party filing a request for hearing.

(3) Intervenor is a person permitted to participate as a party under § 13.51.

(b) *Representatives.* Any party to a proceeding under this subpart may appear and be heard in person or by a representative. A representative is an attorney, or another representative designated by the party.

(c) *Notice of appearance.* (1) Content. The representative of a party must file a notice of appearance that includes the representative's name, address, telephone number, and, if available, fax number, and email address.

(2) Filing. A notice of appearance may be incorporated into an initial filing in a proceeding. A notice of appearance by additional representatives or substitutes after an initial filing in a proceeding must be filed independently.

**§13.35 Request for hearing, complaint, and answer.**

(a) *Initial filing and service.* A request for hearing must be filed with the FAA Hearing Docket, and a copy must be served on the official who issued the notice of proposed action, in accordance with the requirements in § 13.43 for filing and service of documents. The request for hearing must be in writing and describe the action proposed by the FAA, and must contain a statement that a hearing is requested under this subpart D.

(b) *Complaint.* Within 20 days after service of the copy of the request for hearing, the official who issued the notice of proposed action must forward a copy of that notice, which serves as the complaint, to the FAA Hearing Docket.

(c) *Answer.* Within 30 days after service of the copy of the complaint, the Respondent must file an answer to the complaint. All allegations in the complaint not specifically denied in the answer are deemed admitted.

**§13.37 Hearing Officer: Assignment and powers.**

As soon as practicable after the filing of the complaint, the Director of the Office of Adjudication will assign a Hearing Officer to preside over the matter. The Hearing Officer may—

- (a) Give notice concerning, and hold, prehearing conferences and hearings;
- (b) Administer oaths and affirmations;
- (c) Examine witnesses;
- (d) Adopt procedures for the submission of evidence in written form;
- (e) Issue subpoenas;

(f) Rule on offers of proof;

(g) Receive evidence;

(h) Regulate the course of proceedings, including but not limited to discovery, motions practice, imposition of sanctions, and the hearing;

(i) Hold conferences, before and during the hearing, to settle and simplify issues by consent of the parties;

(j) Dispose of procedural requests and similar matters;

(k) Issue protective orders governing the exchange and safekeeping of information otherwise protected by law, except that national security information may not be disclosed under such an order;

(l) Issue orders and decisions, and make findings of fact, as appropriate; and

(m) Take any other action authorized by this subpart.

**§13.39 Disqualification of Hearing Officer.**

If disqualified for any reason, the Hearing Officer must withdraw from the case.

**§13.41 Separation of functions and prohibition on ex parte communications.**

(a) *Separation of powers.* The Hearing Officer independently exercises the powers under this subpart in a manner conducive to justice and the proper dispatch of business. The Hearing Officer must not participate in any appeal to the Administrator.

(b) *Ex parte communications.* (1) No substantive ex parte communications between the Hearing Officer and any party are permitted.

(2) A hearing, conference, or other event scheduled with prior notice will not constitute ex parte communication prohibited by this section. A hearing, conference, or other event scheduled with prior notice, may proceed in the Hearing Officer's sole discretion if a party fails to appear,

respond, or otherwise participate, and will not constitute an ex parte communication prohibited by this section.

(3) For an appeal to the Administrator under this subpart, FAA attorneys representing the complainant must not advise the Administrator or engage in any ex parte communications with the Administrators or his advisors.

### **§13.43 Service and filing of pleadings, motions, and documents.**

(a) *General rule.* A party must file all requests for hearing, pleadings, motions, and documents with the FAA Hearing Docket, and must serve a copy upon all parties to the proceedings.

(b) *Methods of filing.* Filing must be by email, personal delivery, mail, or fax.

(c) *Address for filing.* A person filing a document with the FAA Hearing Docket must use the address identified for the method of filing as follows:

(1) *If delivery is in person, or by expedited or overnight express courier service:* Federal Aviation Administration, 600 Independence Avenue, SW, Wilbur Wright Building – Suite 2W100, Washington, DC 20597; Attention: FAA Hearing Docket, AGC-70.

(2) *If delivery is via U.S. mail, or U.S. certified or registered mail:* Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Attention: FAA Hearing Docket, AGC-70, Wilbur Wright Building—Suite 2W100.

(3) The FAA Office of Adjudication will make available on its website, an email address and fax number for the FAA Hearing Docket, as well as other contact information.

(d) *Requirement to file an original document and number of copies.* A party must file an original document and one copy when filing by personal delivery or by mail. Only one copy must be filed if filing is accomplished by email or fax.

(e) *Filing by email.* A document that is filed by email must be attached as a Portable Document Format (PDF) file to an email. The document must be signed in accordance with § 13.207. The email message does not constitute a submission, but serves only to deliver the attached PDF file to the FAA Hearing Docket.

(f) *Methods of service.--(1) General.* A person may serve any document by email, personal delivery, mail, or fax.

(2) *Service by email.* Service of documents by email is voluntary and requires the prior consent of the person to be served by email. A person may retract consent to be served by email by filing and serving a written retraction. A document that is served by email must be attached as a PDF file to an email message.

(g) *Certificate of service.* A certificate of service must accompany all documents filed with the FAA Hearing Docket. The certificate of service must be signed, describe the method of service, and state the date of service.

(h) *Date of filing and service.* If a document is sent by fax or email, the date of filing and service is the date the email or fax is sent. If a document is sent by personal delivery or by expedited or overnight express courier service, the date of filing and service is the date that delivery is accomplished. If a document is mailed, the date of filing and service is the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

#### **§13.44 [Removed and Reserved]**

#### **§13.45 Computation of time and extension of time.**

(a) In computing any period of time prescribed or allowed by this subpart, the date of the act, event, default, notice or order is not to be included in the computation. The last day of the period

so computed is to be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or a Federal holiday.

(b) The parties may agree to extend the time for filing any document required by this subpart, with the consent of—

(1) The Director of the Office of Adjudication, prior to the designation of a Hearing Officer;

(2) The Hearing Officer, prior to the filing of a notice of appeal; or

(3) The Director of the Office of Adjudication, after the filing of a notice of appeal.

(c) If the parties do not agree, a party may make a written request to extend the time for filing to the appropriate official identified in paragraph (b) of this section. The appropriate official may grant the request for good cause shown.

#### **§13.47 Withdrawal or amendment of the complaint, answer or other filings.**

(a) *Withdrawal.* At any time before the hearing, the complainant may withdraw the complaint, and the respondent may withdraw the request for hearing.

(b) *Amendments.* At any time more than 10 days before the date of hearing, any party may amend its complaint, answer, or other pleading, by filing the amendment with the FAA Hearing Docket and serving a copy of it on each other party. After that time, amendment requires approval of the Hearing Officer. If an initial pleading is amended, the Hearing Officer must allow the other parties a reasonable opportunity to respond.

#### **§13.49 Motions.**

(a) *Motions in lieu of an answer.* A respondent may file a motion to dismiss or a motion for a more definite statement in place of an answer. If the Hearing Officer denies the motion, the respondent must file an answer within 10 days.

(1) *Motion to dismiss.* The respondent may file a motion asserting that the allegations in the complaint fail to state a violation of federal aviation statutes, regulations in this chapter, lack of qualification of the respondent, or other appropriate grounds.

(2) *Motion for more definite statement.* The respondent may file a motion that the allegations in the notice be made more definite and certain.

(b) *Motion to dismiss request for hearing.* The FAA may file a motion to dismiss a request for hearing based on jurisdiction, timeliness, or other appropriate grounds.

(c) *Motion for decision on the pleadings or for summary decision.* After the complaint and answer are filed, either party may move for a decision on the pleadings or for a summary decision, in the manner provided by Rules 12 and 56, respectively, of the Federal Rules of Civil Procedure.

(d) *Motion to strike.* Upon motion of either party, the Hearing Officer may order stricken, from any pleadings, any insufficient allegation or defense, or any redundant, immaterial, impertinent, or scandalous matter.

(e) *Motion to compel.* Any party may file a motion asking the Hearing Officer to order any other party to produce discovery requested in accordance with §13.53 if—

(1) The other party has failed to timely produce the requested discovery; and

(2) The moving party certifies it has in good faith conferred with the other party in an attempt to obtain the requested discovery prior to filing the motion to compel.

(f) *Motion for protective order.* The Hearing Officer may order information contained in anything filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the Hearing Officer, disclosure would be detrimental to aviation safety; disclosure would not be in the public interest; or the information is not otherwise required to be

made available to the public. Any person may make written objection to the public disclosure of any information, stating the ground for such objection.

(g) *Other motions.* Any application for an order or ruling not otherwise provided for in this subpart must be made by motion.

(h) *Responses to motions.* Any party may file a response to any motion under this subpart within 10 days after service of the motion.

### **§13.51 Intervention.**

Any person may move for leave to intervene in a proceeding and may become a party thereto, if the Hearing Officer, after the case is sent to the Hearing Officer for hearing, finds that the person may be bound by the order to be issued in the proceedings or has a property or financial interest that may not be adequately represented by existing parties, and that the intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, a motion for leave to intervene may not be considered if it is filed less than 10 days before the hearing.

### **§13.53 Discovery.**

(a) Discovery requests and responses are not filed with the FAA Hearing Docket unless in support of a motion, offered for impeachment, or other permissible circumstances as approved by the Hearing Officer.

(b) *Scope of discovery.* Any party may discover any matter that is not privileged and is relevant to any party's claim or defense.

(c) *Time for response to written discovery requests.* (1) Written discovery includes interrogatories, requests for admission or stipulations, and requests for production of documents.

(2) Unless otherwise directed by the Hearing Officer, a party must serve its response to a discovery request no later than 30 days after service of the discovery request.

(d) *Depositions.* After the respondent has filed a request for hearing and an answer, either party may take testimony by deposition.

(e) *Limits on discovery.* The Hearing Officer may limit the frequency and extent of discovery upon a showing by a party that—

(1) The discovery requested is cumulative or repetitious;

(2) The discovery requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

### **§13.55 Notice of hearing.**

The Hearing Officer must set a reasonable date, time, and location for the hearing, and must give the parties adequate notice thereof and of the nature of the hearing. Due regard must be given to the convenience of the parties with respect to the location of the hearing.

### **§13.57 Subpoenas and witness fees.**

(a) The Hearing Officer, upon application by any party to the proceeding, may issue subpoenas requiring the attendance of witnesses or the production of documents or tangible things at a hearing or for the purpose of taking depositions, as permitted by law. The application for producing evidence must show its general relevance and reasonable scope. Absent good cause shown, a party must file a request for a subpoena at least:

(1) 15 days before a scheduled deposition under the subpoena; or

(2) 30 days before a scheduled hearing where attendance at the hearing is sought.

(b) A party seeking the production of a document in the custody of an FAA employee must use the discovery procedure found in § 13.53, and if necessary, a motion to compel under § 13.49. A party that applies for the attendance of an FAA employee at a hearing must send the application, in writing, to the Hearing Officer setting forth the need for that employee's attendance.

(c) 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 allowances as provided for under 28 U.S.C. 1821. 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, must pay the witness fees and allowances described in this section.

(d) *Service of subpoenas.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person. Except for the Complainant, the party that requested the subpoena must tender at the time of service the fees for 1 day's attendance and the allowances allowed by law if the subpoena requires that person's attendance. Proving service, if necessary, requires the filing with the FAA Hearing Docket of a statement showing the date and manner of service and the names of the persons served. The server must certify the statement.

(e) *Motion to quash or modify the subpoena.* A party, or any person served with a subpoena, may file a motion to quash or modify the subpoena with the Hearing Officer at or before the time specified in the subpoena for compliance. The movant must 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 thing 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 Hearing Officer on the motion.

(f) *Enforcement of subpoena.* If a person disobeys a subpoena, a party may apply to a U.S. district court to seek judicial enforcement of the subpoena.

### **§13.59 Evidence.**

(a) Each party to a hearing may present the party's case or defense by oral or documentary evidence, submit evidence in rebuttal, and conduct such cross-examination as may be needed for a full disclosure of the facts.

(b) Except with respect to affirmative defenses and notices of proposed denial, the burden of proof is upon the complainant.

### **§13.61 Argument and submittals.**

The Hearing Officer must give the parties adequate opportunity to present arguments in support of motions, objections, and the final order. The Hearing Officer may determine whether arguments are to be oral or written. At the end of the hearing the Hearing Officer may allow each party to submit written proposed findings and conclusions and supporting reasons for them.

### **§13.63 Record, decision, and aircraft registration proceedings.**

(a) *The record.* The testimony and exhibits admitted at a hearing, together with all papers, requests, and rulings filed in the proceedings are the exclusive basis for the issuance of an order. Any party may obtain a transcript of the hearing from the official reporter upon payment of the required fees.

(b) *Hearing Officer's Decision.* The decision by the Hearing Officer must include findings of fact based on the record, conclusions of law, and an appropriate order.

(c) *Certain Aircraft Registration Proceedings.* If the Hearing Officer determines that an aircraft is ineligible for a certificate of aircraft registration in proceedings relating to aircraft

registration orders suspending or revoking a certificate of registration under § 13.20, the Hearing Officer may suspend or revoke the aircraft registration certificate.

**§13.65 Appeal to the Administrator, reconsideration, and judicial review.**

(a) Any party to a hearing may appeal from the order of the Hearing Officer by filing with the FAA Hearing Docket a notice of appeal to the Administrator within 20 days after the date of issuance of the order. Filing and service of the notice of appeal, and any other papers, are accomplished according to the procedures in § 13.43.

(b) If a notice of appeal is not filed from the order issued by a Hearing Officer, such order is final with respect to the parties. Such order is not binding precedent and is not subject to judicial review.

(c) Any person filing an appeal authorized by paragraph (a) of this section must file an appeal brief with the Administrator within 40 days after the date of issuance of the order, and serve a copy on the other party. A reply brief must be filed within 40 days after service of the appeal brief and a copy served on the appellant.

(d) On appeal the Administrator reviews the record of the proceeding, and issues an order dismissing, reversing, modifying or affirming the order. The Administrator's order includes the reasons for the Administrator's action. The Administrator considers only whether:

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

(2) Each conclusion is made in accordance with law, precedent, and policy; and

(3) The Hearing Officer committed any prejudicial error.

(e) The Director and legal personnel of the Office of Adjudication serve as the advisors to the Administrator for appeals under this section.

(1) The Director has the authority to:

(i) Manage all or portions of individual appeals; and to prepare written decisions and proposed final orders in such appeals;

(ii) Issue procedural and other interlocutory orders aimed at proper and efficient appeal management, including, without limitation, scheduling and sanctions orders;

(iii) Grant or deny motions to dismiss appeals;

(iv) Dismiss appeals upon request of the appellant or by agreement of the parties;

(v) Stay decisions and orders of the Administrator, pending judicial review or reconsideration by the Administrator;

(vi) Summarily dismiss repetitious or frivolous petitions to reconsider or modify orders;

(vii) Correct typographical, grammatical and similar errors in the Administrator's decisions and orders, and to make non-substantive editorial changes; and

(viii) Take all other reasonable steps deemed necessary and proper for the management of the appeals process, in accordance with this part and applicable law.

(2) The Director's authority in paragraph (e)(1) of this section may be re-delegated, as necessary, except to Hearing Officers and others materially involved in the hearing that is the subject of the appeal.

(f) Motions to reconsider the final order of the Administrator must be filed with the FAA Hearing Docket within thirty days of service of the Administrator's order.

(g) Judicial review of the Administrator's final order under this section is provided in accordance with 49 U.S.C. 5127 or 46110, as applicable.

### **§13.67 Procedures for expedited proceedings.**

(a) When an expedited administrative hearing is requested in accordance with § 13.20(d), the procedures in this subpart will apply except as provided in paragraphs (a)(1) through (a)(7) of this section.

(1) Service and filing of pleadings, motions, and documents must be by overnight delivery, and fax or email. Responses to motions must be filed within 7 days after service of the motion.

(2) Within 3 days after receipt of the request for hearing, the agency must file a copy of the notice of proposed action, which serves as the complaint, to the FAA Hearing Docket.

(3) Within 3 days after receipt of the complaint, the person that requested the hearing must file an answer to the complaint. All allegations in the complaint not specifically denied in the answer are deemed admitted. Failure to file a timely answer, absent a showing of good cause, constitutes withdrawal of the request for hearing.

(4) Within 3 days of the filing of the complaint, the Director of the Office of Adjudication will assign a Hearing Officer to preside over the matter.

(5) The parties must serve discovery as soon as possible and set time limits for compliance with discovery requests that accommodate the accelerated adjudication schedule set forth in this subpart. The Hearing Officer will resolve any failure of the parties to agree to a discovery schedule.

(6) The expedited hearing must commence within 40 days after the notice of proposed action was issued.

(7) The Hearing Officer must issue an oral decision and order dismissing, reversing, modifying, or affirming the notice of proposed action at the close of the hearing. If a notice of appeal is not filed, such order is final with respect to the parties and is not subject to judicial review.

(b) Any party to the expedited hearing may appeal from the initial decision of the Hearing Officer to the Administrator by filing a notice of appeal within 3 days after the date on which the decision was issued. The time limitations for the filing of documents for appeals under this section will not be extended by reason of the unavailability of the hearing transcript.

(1) Any appeal to the Administrator under this section must be perfected within 7 days after the date the notice of appeal was filed by filing a brief in support of the appeal. Any reply to the appeal brief must be filed within 7 days after the date the appeal brief was served on that party. The Administrator must issue an order deciding the appeal no later than 80 days after the date the notice of proposed action was issued.

(2) The Administrator's order is immediately effective and constitutes the final agency decision. The Administrator's order may be appealed pursuant to 49 U.S.C. 46110. The filing of an appeal under 49 U.S.C. 46110 does not stay the effectiveness of the Administrator's order.

(c) At any time after an immediately effective order is issued, the FAA may request the United States Attorney General, or the delegate of the Attorney General, to bring an action for appropriate relief in accordance with § 13.25.

**§13.69 Other matters: Alternative dispute resolution, standing orders, and forms.**

(a) Parties may use mediation to achieve resolution of issues in controversy addressed by this subpart. Parties seeking alternative dispute resolution services may engage the services of a mutually acceptable mediator. The mediator must not participate in the adjudication under this subpart of any matter where he serves as a mediator. Mediation discussions and submissions will remain confidential consistent with the provisions of the Administrative Dispute Resolution Act, the principles of Federal Rule of Evidence 408, and other applicable federal laws.

(b) The Director of the Office of Adjudication may issue standing orders and forms needed for the proper dispatch of business under this subpart.

6. Revise subpart E to read as follows:

**SUBPART E—ORDERS OF COMPLIANCE UNDER THE HAZARDOUS MATERIALS  
TRANSPORTATION ACT**

**Sec.**

- 13.71      Applicability.
- 13.73      Notice of proposed order of compliance.
- 13.75      Reply or request for hearing.
- 13.77      Consent order of compliance.
- 13.79      [Removed and Reserved]
- 13.81      Emergency orders.
- 13.83      [Removed and Reserved]
- 13.85      [Removed and Reserved]
- 13.87      [Removed and Reserved]

**§ 13.71    Applicability.**

(a) An order of compliance may be issued after notice and an opportunity for a hearing in accordance with §§ 13.73 through 13.77 whenever the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement has reason to believe that a person is engaging in the transportation or shipment by air of hazardous materials in violation of the Hazardous Materials Transportation Act, as amended and codified at 49 U.S.C. chapter 51, or any regulation, or order issued under it, for which the FAA exercises enforcement responsibility, and the circumstances do not require the issuance of an emergency order under 49 U.S.C. 5121(d).

(b) If circumstances require the issuance of an emergency order under 49 U.S.C. 5121(d), the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement will issue an emergency order of compliance as described in § 13.81.

**§ 13.73    Notice of proposed order of compliance.**

The Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement, may issue to an alleged violator a notice of proposed order of compliance advising the alleged

violator of the charges and setting forth the remedial action sought in the form of a proposed order of compliance.

**§ 13.75 Reply or request for hearing.**

(a) Within 30 days after service upon the alleged violator of a notice of proposed order of compliance, the alleged violator may—

(1) Submit a written reply;

(2) Submit a written request for an informal conference to discuss the matter with an agency attorney; or

(3) Request a hearing in accordance with subpart D of this part.

(b) If, after an informal conference is held or a reply is filed, the agency attorney notifies the person named in the notice that some or all of the proposed agency action will not be withdrawn or not subject to a consent order of compliance, the alleged violator may, within 10 days after receiving the agency attorney's notification, request a hearing in accordance with subpart D of this part.

(c) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) or (b) of this section, as applicable—

(1) Constitutes a waiver of the right to a hearing under subpart D of this part and the right to petition for judicial review; and

(2) Authorizes the Administrator to make any appropriate findings of fact and to issue an appropriate order of compliance, without further notice or proceedings.

**§ 13.77 Consent order of compliance.**

(a) At any time before the issuance of an order of compliance, an agency attorney and the alleged violator may agree to dispose of the case by the issuance of a consent order of compliance.

(b) The alleged violator may submit a proposed consent order to an agency attorney. The proposed consent order must include—

(1) An admission of all jurisdictional facts;

(2) An express waiver of the right to further procedural steps and of all rights to legal review in any forum;

(3) An express waiver of attorney’s fees and costs;

(4) If a notice has been issued prior to the proposed consent order of compliance, an incorporation by reference of the notice and an acknowledgement that the notice may be used to construe the terms of the consent order of compliance; and

(5) If a request for hearing is pending in any forum, a provision that the alleged violator will withdraw the request for a hearing and request that the case be dismissed.

**§ 13.79 [Removed and Reserved]**

**§ 13.81 Emergency orders.**

(a) Notwithstanding §§ 13.73 through 13.77, the Chief Counsel, each Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement may issue an emergency order of compliance, which is effective upon issuance, in accordance with the procedures in subpart C of 49 CFR part 109, if the person who issues the order finds that there is an “imminent hazard” as defined in 49 CFR 109.1.

(b) The FAA official who issued the emergency order of compliance may rescind or suspend the order if the criteria set forth in paragraph (a) of this section are no longer satisfied, and, when appropriate, may issue a notice of proposed order of compliance under § 13.73.

(c) If at any time in the course of a proceeding commenced in accordance with § 13.73 the criteria set forth in paragraph (a) of this section are satisfied, the official who issued the notice

may issue an emergency order of compliance, even if the period for filing a reply or requesting a hearing specified in § 13.75 has not expired.

§ 13.83 [Removed and Reserved]

§ 13.85 [Removed and Reserved]

§ 13.87 [Removed and Reserved]

7. Revise subpart F to read as follows:

**SUBPART F—FORMAL FACT-FINDING INVESTIGATION UNDER AN ORDER OF INVESTIGATION**

**Sec.**

13.101 Applicability.

13.103 Order of investigation.

13.105 Notification.

13.107 Designation of additional parties.

13.109 Convening the investigation.

13.111 Subpoenas.

13.113 Noncompliance with the investigative process.

13.115 Public proceedings.

13.117 Conduct of investigative proceeding or deposition.

13.119 Immunity and orders requiring testimony or other information.

13.121 Witness fees.

13.123 Submission by party to the investigation.

13.125 Depositions.

13.127 Reports, decisions and orders.

13.129 Post-investigation action.

13.131 Other procedures.

**§13.101 Applicability.**

(a) This subpart applies to fact-finding investigations in which an investigation has been ordered under §§ 13.3(c) or 13.5(f)(2) of this part.

(b) This subpart does not limit the authority of any person to issue subpoenas, administer oaths, examine witnesses and receive evidence in any informal investigation as otherwise provided by law.

**§13.103 Order of investigation.**

The order of investigation—

(a) Defines the scope of the investigation by describing the information sought in terms of its subject matter or its relevancy to specified FAA functions;

(b) Sets forth the form of the investigation which may be either by individual deposition or investigative proceeding or both; and

(c) Names the official who is authorized to conduct the investigation and serve as the Presiding Officer.

**§13.105 Notification.**

Any person under investigation and any person required to testify and produce documentary or physical evidence during the investigation will be advised of the purpose of the investigation, and of the place where the investigative proceeding or deposition will be convened. This may be accomplished by a notice of investigation or by a subpoena. A copy of the order of investigation may be sent to such persons when appropriate.

**§13.107 Designation of additional parties.**

(a) The Presiding Officer may designate additional persons as parties to the investigation, if in the discretion of the Presiding Officer, it will aid in the conduct of the investigation.

(b) The Presiding Officer may designate any person as a party to the investigation if—

(1) The person petitions the Presiding Officer to participate as a party;

(2) The disposition of the investigation may as a practical matter impair the ability to protect the person's interest unless allowed to participate as a party; and

(3) The person's interest is not adequately represented by existing parties.

### **§13.109 Convening the investigation.**

The Presiding Officer will conduct the investigation at a location convenient to the parties involved and as expeditious and efficient handling of the investigation permits.

### **§13.111 Subpoenas.**

(a) At the discretion of the Presiding Officer, or at the request of a party to the investigation, the Presiding Officer may issue a subpoena directing any person to appear at a designated time and place to testify or to produce documentary or physical evidence relating to any matter under investigation.

(b) Subpoenas must be served by personal service on the person or an agent designated in writing for the purpose, or by registered or certified mail addressed to the person or agent. Whenever service is made by registered or certified mail, the date of mailing will be considered the time when service is made.

(c) Subpoenas extend in jurisdiction throughout the United States and any territory or possession thereof.

### **§13.113 Noncompliance with the investigative process.**

(a) If a person disobeys a subpoena, the Administrator or a party to the investigation may petition a court of the United States to enforce the subpoena in accordance with applicable statutes.

(b) If a party to the investigation fails to comply with the provisions of this subpart or an order issued by the Presiding Officer, the Administrator may bring a civil action to enforce the requirements of this subpart or any order issued under this subpart in a court of the United States in accordance with applicable statutes.

**§13.115 Public proceedings.**

(a) All investigative proceedings and depositions must be public unless the Presiding Officer determines that the public interest requires otherwise.

(b) The Presiding Officer may order information contained in any report or document filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the Presiding Officer, disclosure would adversely affect the interests of any person and is not required in the public interest or is not otherwise required by statute to be made available to the public. Any person may make written objection to the public disclosure of information, stating the grounds for such objection.

**§13.117 Conduct of investigative proceeding or deposition.**

(a) The Presiding Officer may question witnesses.

(b) Any witness may be accompanied by counsel.

(c) Any party may be accompanied by counsel and either the party or counsel may—

(1) Question witnesses, provided the questions are relevant and material to the matters under investigation and would not unduly impede the progress of the investigation; and

(2) Make objections on the record and argue the basis for such objections.

(d) Copies of all notices or written communications sent to a party or witness must, upon request, be sent to that person's attorney of record.

**§13.119 Immunity and orders requiring testimony or other information**

(a) Whenever a person refuses, on the basis of a privilege against self-incrimination, to testify or provide other information during the course of any investigation conducted under this subpart, the Presiding Officer may, with the approval of the Attorney General of the United States, issue an order requiring the person to give testimony or provide other information. However, no testimony or other information so compelled (or any information directly or indirectly derived from such testimony or other information) may be used against the person in any criminal case, except in a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) The Presiding Officer may issue an order under this section if—

(1) The testimony or other information from the witness may be necessary to the public interest; and

(2) The witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination.

(c) Immunity provided by this section will not become effective until the person has refused to testify or provide other information on the basis of a privilege against self-incrimination, and an order under this section has been issued. An order, however, may be issued prospectively to become effective in the event of a claim of the privilege.

**§13.121 Witness fees.**

All witnesses appearing, other than employees of the Federal Aviation Administration, are entitled to the same fees and allowances as provided for under 28 U.S.C. 1821.

**§13.123 Submission by party to the investigation.**

(a) During an investigation conducted under this subpart, a party may submit to the Presiding Officer—

(1) A list of witnesses to be called, specifying the subject matter of the expected testimony of each witness, and

(2) A list of exhibits to be considered for inclusion in the record.

(b) If the Presiding Officer determines that the testimony of a witness or the receipt of an exhibit in accordance with paragraph (a) of this section will be relevant, competent and material to the investigation, the Presiding Officer may subpoena the witness or use the exhibit during the investigation.

**§13.125 Depositions.**

Depositions for investigative purposes may be taken at the discretion of the Presiding Officer with reasonable notice to the party under investigation. Depositions must be taken before the Presiding Officer or other person authorized to administer oaths and designated by the Presiding Officer. The testimony must be reduced to writing by the person taking the deposition, or under the direction of that person, and where possible must then be subscribed by the deponent. Any person may be compelled to appear and testify and to produce physical and documentary evidence.

**§13.127 Reports, decisions and orders.**

The Presiding Officer must issue a written report based on the record developed during the formal investigation, including a summary of principal conclusions. A summary of principal conclusions must be prepared by the official who issued the order of investigation in every case which results in no action, or no action as to a particular party to the investigation. All such

reports must be furnished to the parties to the investigation and made available to the public on request.

**§13.129 Post-investigation action.**

A decision on whether to initiate subsequent action must be made on the basis of the record developed during the formal investigation and any other information in the possession of the Administrator.

**§13.131 Other procedures.**

Any question concerning the scope or conduct of a formal investigation not covered in this subpart may be ruled on by the Presiding Officer on his or her own initiative, or on the motion of a party or a person testifying or producing evidence.

8. Revise subpart G to read as follows:

**SUBPART G—RULES OF PRACTICE IN FAA CIVIL PENALTY ACTIONS**

**Sec.**

13.201 Applicability.

13.202 Definitions.

13.203 Separation of functions.

13.204 Appearances and rights of parties.

13.205 Administrative law judges.

13.206 Intervention.

13.207 Certification of documents.

13.208 Complaint.

13.209 Answer.

13.210 Filing of documents.

- 13.211 Service of documents.
- 13.212 Computation of time.
- 13.213 Extension of time.
- 13.214 Amendment of pleadings.
- 13.215 Withdrawal of complaint or request for hearing.
- 13.216 Waivers.
- 13.217 Joint procedural or discovery schedule.
- 13.218 Motions.
- 13.219 Interlocutory appeals.
- 13.220 Discovery.
- 13.221 Notice of hearing.
- 13.222 Evidence.
- 13.223 Standard of proof.
- 13.224 Burden of proof.
- 13.225 Offer of proof.
- 13.226 Public disclosure of information.
- 13.227 Expert or opinion witnesses.
- 13.228 Subpoenas.
- 13.229 Witness fees.
- 13.230 Record.
- 13.231 Argument before the administrative law judge.
- 13.232 Initial decision.
- 13.233 Appeal from initial decision.
- 13.234 Petition to reconsider or modify a final decision and order of the FAA decisionmaker

on appeal.

13.235 Judicial review of a final decision and order.

13.236 Alternative dispute resolution.

**§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.

**§13.202 Definitions.**

For this subpart only, the following definitions apply:

*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 or the Assistant Chief Counsel responsible for the prosecution of enforcement-related matters under this subpart, or attorneys who are supervised by those officials or are assigned to prosecute a particular enforcement-related matter under this subpart. Agency attorney does not include the Chief Counsel or anyone from the Office of Adjudication.

*Complaint* means a document issued by an agency attorney alleging a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121-5128, or a rule, regulation, or order issued under those statutes, that has been filed with the FAA Hearing Docket after a hearing has been requested under § 13.16(f)(3) or (g)(2)(ii) of this part.

*Complainant* means the FAA office that issued the notice of proposed civil penalty under § 13.16

*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 decisionmaking 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. mail, U.S. certified mail, U.S. registered mail, or use of an expedited or overnight express courier service, but does not include email.

*Office of Adjudication* means the Federal Aviation Administration Office of Adjudication, including the FAA Hearing Docket, the Director of the Office of Adjudication and legal personnel, or any subsequently designated office (including its head and any legal personnel) that advises the FAA decisionmaker regarding appeals of initial decisions and orders to the FAA decisionmaker.

*Order assessing civil penalty* means a document that contains a finding of a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121-5128, or a rule, regulation or order issued under those statutes, 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 is 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 is 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, the Complainant and any intervenor.

*Personal delivery* includes hand-delivery or use of a contract or express messenger service. "Personal delivery" does not include the use of Federal 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 named in a complaint.

*Writing or written* includes paper or electronic documents that are filed or served by email, mail, personal delivery, or fax.

### **§13.203 Separation of functions.**

(a) Civil penalty proceedings, including hearings, are prosecuted by an agency attorney.

(b) An agency employee who has engaged in the performance of investigative or prosecutorial functions in a civil penalty action must not participate in deciding or advising the administrative law judge or the FAA decisionmaker in that case, or a factually-related case, but may participate as counsel for the Complainant or as a witness in the public proceedings.

(c) The Chief Counsel and the Director and legal personnel of the Office of Adjudication will advise the FAA decisionmaker regarding any appeal of an initial decision or order in a civil penalty action to the FAA decisionmaker.

### **§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 must file a notice of appearance in the action, in the manner provided in § 13.210, and must serve a copy of the notice of appearance on each party, and on the administrative law judge, if assigned,

in the manner provided in § 13.211, before participating in any proceeding governed by this subpart. The attorney or representative must include the name, address and telephone number, and, if available, fax number, and email address, of the attorney or representative in the notice of appearance.

(c) Any person may request a copy of a document in the record 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, prehearing conferences and hearings;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas as authorized by law;
- (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;
- (9) Make findings of fact and conclusions of law, and issue an initial decision
- (10) Bar a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding; and
- (11) Take any other action authorized by this subpart.

(b) *Limitations on the power of the administrative law judge.* The administrative law judge must 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 under § 13.219(c).

(c) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion for disqualification under § 13.218.

### **§13.206 Intervention.**

(a) A person may submit a motion for leave to intervene as a party in a civil penalty action. Except for good cause shown, a motion for leave to intervene must be submitted not later than 10 days before the hearing.

(b) The administrative law judge may grant a motion for leave to intervene if the administrative law judge finds that intervention will not unduly broaden the issues or delay the proceedings and –

(1) The person seeking to intervene will be bound by any order or decision entered in the action, or

(2) The person seeking to intervene has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

(c) The administrative law judge may determine the extent to which an intervenor may participate in the proceedings.

### **§13.207 Certification of documents.**

(a) *Signature required.* The attorney of record, the party, or the party's representative must sign, by hand, electronically, or by other method acceptable to the administrative law judge, or, if the matter is on appeal, to the FAA decisionmaker, each document tendered for filing with the FAA Hearing Docket or served on the administrative law judge and on each other party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative has

read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions*. If the attorney of record, the party, or the party's representative signs a document in violation of this section, the administrative law judge or the FAA decisionmaker must:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker.

### **§13.208 Complaint.**

(a) *Filing*. The agency attorney must file the complaint with the FAA Hearing Docket, or may file a written motion to dismiss a request for hearing under § 13.218 instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing.

When filing the complaint, the agency attorney must follow the filing instructions in § 13.210. The agency attorney may suggest a location for the hearing when filing the complaint.

(b) *Service.* An agency attorney must serve a copy of the complaint on the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action. When serving the complaint, the agency attorney must follow the service instructions in § 13.211.

(c) *Contents.* A complaint must set forth the facts alleged, any regulation allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

(d) *Motion to dismiss stale allegations or complaint.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred on or after August 2, 1990, and more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

(1) An administrative law judge may not grant the motion and dismiss the complaint or part of the complaint if the administrative law judge finds that the agency has shown good cause for any delay in issuing the notice of proposed civil penalty.

(2) If the agency fails to show good cause for any delay, an administrative law judge may dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued the notice of proposed civil penalty to the respondent.

(3) A party may appeal the administrative law judge's ruling on the motion to dismiss the complaint or any part of the complaint in accordance with § 13.219(b).

### **§13.209 Answer.**

(a) *Writing required.* A respondent must file in the FAA Hearing Docket a written answer to the complaint, or may file a written motion pursuant to §§ 13.208 or 13.218 instead of filing an

answer, not later than 30 days after service of the complaint. The answer must be dated and signed by the person responding to the complaint. An answer must be typewritten or legibly handwritten.

(b) *Filing.* A person filing an answer or motion under paragraph (a) of this section must follow the filing instructions in § 13.210.

(c) *Service.* A person filing an answer or a motion under paragraph (a) of this section must serve a copy of the answer or motion in accordance with the service instructions in § 13.211.

(d) *Contents.* An answer must specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer. The person filing an answer may recommend a location for the hearing when filing the answer.

(e) *Specific denial of allegations required.* A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each allegation in the complaint. All allegations in the complaint not specifically denied in the answer are deemed admitted. A general denial of the complaint is deemed a failure to file an answer.

(f) *Failure to file answer.* A person's failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint.

### **§13.210 Filing of documents.**

(a) *General rule.* Unless provided otherwise in this subpart, all documents in proceedings under this subpart must be tendered for filing with the FAA Hearing Docket.

(b) *Methods of filing.* Filing must be by email, personal delivery, mail, or fax.

(c) *Address for filing.* A person filing a document with the FAA Hearing Docket must use the address identified for the method of filing as follows:

(1) *If delivery is in person, or by expedited or overnight express courier service:* Federal Aviation Administration, 600 Independence Avenue, SW, Wilbur Wright Building – Suite 2W100, Washington, DC 20597; Attention: FAA Hearing Docket, AGC-70.

(2) *If delivery is via U.S. mail, or U.S. certified or registered mail:* Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Attention: FAA Hearing Docket, AGC-70, Wilbur Wright Building—Suite 2W100.

(3) *If delivery is via email or fax:* The email address and fax number for the FAA Hearing Docket, made available on FAA Office of Adjudication website.

(d) *Date of filing.* If a document is filed by fax or email, the date of filing is the date the email or fax is sent. If a document is filed by personal delivery, the date of filing is the date that personal delivery is accomplished. If a document is filed by mail, the date of filing is the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Form.* Each document must be typewritten or legibly handwritten.

(f) *Contents.* Unless otherwise specified in this subpart, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested.

(g) *Requirement to File an Original Document and Number of Copies.* A party must file an original document and one copy when filing by personal delivery or by mail. Only one copy must be filed if filing is accomplished by email or fax.

(h) *Filing by email.* A document that is filed by email must be attached as a Portable Document Format (PDF) file to an email. The document must be signed in accordance with

§ 13.207. The email message does not constitute a submission, but serves only to deliver the attached PDF file to the FAA Hearing Docket.

**§13.211 Service of documents.**

(a) *General.* A person must serve a copy of all documents on each party and the administrative law judge, if assigned, at the time of filing with the FAA Hearing Docket except as provided otherwise in this subpart.

(b) *Service by the FAA Hearing Docket, the Administrative Law Judge, and the FAA Decisionmaker.* The FAA Hearing Docket, the administrative law judge, and the FAA decisionmaker must send documents to a party by personal delivery, mail, fax, or email as provided in this section.

(c) *Methods of service.--(1) General.* A person may serve any document by email, personal delivery, mail, or fax.

(2) *Service by email.* Service of documents by email is voluntary and requires the prior consent of the person to be served by email. A person may retract consent to be served by email by filing a written retraction with the FAA Hearing Docket and serving it on the other party and the administrative law judge. A document that is served by email must be attached as a PDF file to an email message.

(d) *Certificate of service.* A certificate of service must accompany all documents filed with the FAA Hearing Docket. The certificate of service must be signed, describe the method of service, and state the date of service.

(e) *Date of service.* If a document is served by fax or served by email, the date of service is the date the email or fax is sent. If a document is served by personal delivery, the date of service is the date that personal delivery is accomplished. If a document is mailed, the date of service is the date shown on the certificate of service, the date shown on the postmark if there is no

certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

(f) *Valid service.* A document served by mail or personal delivery that was properly addressed, was sent in accordance with this subpart, and that was returned as unclaimed, or that was refused or not accepted, is deemed to have been served in accordance with this subpart.

### **§13.212 Computation of time.**

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge, or by any applicable statute.

(b) The date of an act, event, or default is not included in a computation of time under this subpart.

(c) The last day of a time period is included unless it is a Saturday, Sunday, or a Federal holiday. If the last day is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

### **§13.213 Extension of time.**

(a) The parties may agree to extend for a reasonable period the time for filing a document under this subpart. The party seeking the extension of time must submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the FAA Hearing Docket. The administrative law judge must sign and issue the order if the extension is reasonable.

(b) A party may file a written motion for an extension of time. A written motion for an extension of time must be filed with the FAA Hearing Docket in accordance with § 13.210. The motion must be filed no later than seven days before the document is due unless good cause for the late filing is shown. The party filing the motion must serve a copy of the motion in

accordance with § 13.211. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) If the administrative law judge fails to rule on a motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed.

#### **§13.214 Amendment of pleadings.**

(a) *Filing and service.* A party must file the amendment with the FAA Hearing Docket and must serve a copy of the amendment on the administrative law judge, if assigned, and on all parties to the proceeding.

(b) *Time.* (1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The administrative law judge must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the FAA Hearing Docket and served on the administrative law judge and other parties.

#### **§13.215 Withdrawal of complaint or request for hearing.**

At any time before or during a hearing, an agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

### **§13.216 Waivers.**

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

### **§13.217 Joint procedural or discovery schedule.**

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, conducting discovery in the proceedings, or both.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file the joint schedule setting forth the dates to which the parties have agreed, in accordance with § 13.210, and must also serve a copy of the joint schedule in accordance with § 13.211. The filing of the joint schedule must include a draft order establishing a joint schedule to be signed by the administrative law judge.

(1) The joint schedule may include, but need not be limited to, requests for discovery, objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the joint schedule.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Joint scheduling order.* The joint schedule filed by the parties is a proposed schedule that requires approval of the administrative law judge to become the joint scheduling order.

(e) *Disputes.* The administrative law judge must resolve disputes regarding discovery or disputes regarding compliance with the joint scheduling order as soon as possible so that the parties may continue to comply with the joint scheduling order.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with a joint scheduling order, the administrative law judge may impose any of the following sanctions, proportional to the party's failure to comply with the order:

- (1) Strike the relevant portion of a party's pleadings;
- (2) Preclude prehearing or discovery motions by that party;
- (3) Preclude admission of the relevant portion of a party's evidence at the hearing, or
- (4) Preclude the relevant portion of the testimony of that party's witnesses at the hearing.

### **§13.218 Motions.**

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by filing a motion in accordance with § 13.210. A party must serve a copy of each motion in accordance with § 13.211.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion not later than 30 days before the hearing in the FAA Hearing Docket in accordance with § 13.210, and must serve a copy on the administrative law judge, if assigned, and on each party in accordance with § 13.211. Motions introduced during a hearing may be made orally on the record unless the administrative law judge directs otherwise.

(d) *Responses to motions.* Any party may file a response, with affidavits or other evidence in support of the response, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the response may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge must rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The administrative law judge must resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge must issue rulings and orders on oral motions. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* The motions that a party may file include but are not limited to the following:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the administrative law judge denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 10 days after service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of a provision of the Federal aviation statute listed in the first sentence in 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or any implementing rule, regulation, or order, or a violation of the Federal

hazardous materials transportation statute, 49 U.S.C. 5121-5128, or any implementing rule, regulation or order.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an administrative law judge grants a motion to dismiss in part, a party may appeal the administrative law judge's ruling on the motion to dismiss under § 13.219(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint in the FAA Hearing Docket and must serve a copy of the complaint on the administrative law judge and on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may appeal to the FAA decisionmaker under § 13.233. If required by the decision on appeal, the agency attorney must file a complaint in the FAA Hearing Docket and must serve a copy of the complaint on the administrative law judge and each party not later than 10 days after service of the FAA decisionmaker's decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer, including a motion to dismiss a stale complaint or allegations as provided in § 13.208. If the motion to dismiss is not granted, the respondent must file an answer in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the agency attorney may file an appeal in the FAA Hearing Docket under § 13.233 and must serve each other party. If required by the FAA decisionmaker's decision on appeal, the respondent must file an answer

in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the decision on appeal.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading which requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the administrative law judge grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the administrative law judge may strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent must file an answer in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the administrative law judge grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge must strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, impertinent, or scandalous matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading. A motion to strike must be filed in the FAA Hearing Docket and served on the administrative law judge, if assigned, and on each other party.

(5) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing shows that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(6) *Motion for disqualification.* A party may file a motion for disqualification in the FAA Hearing Docket and must serve a copy on the administrative law judge and on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Response.* A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge must render a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with § 13.219(b).

(7) *Motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing or order dismissing a request for hearing and answer.* The FAA decisionmaker may treat motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing or order dismissing a request for hearing and answer as a notice of appeal under § 13.233, and if the motion was filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker will issue a briefing schedule.

### **§13.219 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 the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review as provided in § 13.235.

(b) *Interlocutory appeal for cause.* If a party orally requests or files a written request for an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. Any written request for interlocutory appeal for cause must be filed in the FAA Hearing Docket and served on each party and on the administrative law judge. 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 the request if a party shows that delay of the 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 of right, 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 person from the proceedings;

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with § 13.215; or

(3) A ruling or order by the administrative law judge in violation of § 13.205(b).

(d) *Procedure.* A party must file a notice of interlocutory appeal, with supporting documents, with the FAA Hearing Docket, and must serve a copy of the notice and supporting documents on each party and the administrative law judge 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, as appropriate. A party must file a reply, if any, with the FAA Hearing Docket, and serve a copy on each party and the administrative law judge not later than 10 days after service of the appeal. 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) 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.

### **§13.220 Discovery.**

(a) *Initiation of discovery.* Any party may initiate discovery described in this section without the consent or approval of the administrative law judge at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party must not file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and response with the FAA Hearing Docket or serve them on the administrative law judge. In the event of a discovery dispute, a party must attach a copy of the relevant documents in support of a motion made under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests.* Unless otherwise directed by this subpart or agreed by the parties, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing.

(f) *Limiting discovery.* The administrative law judge must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidential orders.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order in the FAA Hearing Docket in accordance with § 13.210 and must serve a copy of the motion for a confidential order on each party and on the administrative law judge in accordance with § 13.211.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the administrative law judge determines that the requested material is not necessary to decide the case, the administrative law judge must preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the administrative law judge determines that the requested material is necessary to decide the case and that a confidential order is warranted, the administrative law judge must provide:

(i) An opportunity for review of the document by the parties off the record;

(ii) Procedures for excluding the information from the record; and

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(h) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order in the FAA Hearing Docket and must serve a copy of the motion for protective order on the administrative law judge and each other party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness's testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* (1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In foreign countries, a party must take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, the administrative law judge, and each party not later than 7 days before the deposition. The notice must be filed in the FAA Hearing Docket simultaneously. A party may serve a notice

of deposition less than 7 days before the deposition only with consent of the administrative law judge. The party noticing a deposition must attach a copy of any subpoena *duces tecum* requesting that materials be produced at the deposition to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party must answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party must state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party must not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory must be counted as a separate interrogatory.

(2) A party must file a motion for leave to serve additional interrogatories on a party with the administrative law judge before serving additional interrogatories on a party. The administrative law judge may grant the motion only if the party shows good cause.

(l) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the administrative law judge determines that a response does not comply with the requirements of this paragraph or that the response is insufficient, the matter is deemed admitted.

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer. Any motion to

compel must be filed with the FAA Hearing Docket and served on the administrative law judge and other parties in accordance with §§ 13.210 and 13.211, respectively.

(n) *Failure to comply with a discovery order.* If a party fails to comply with a discovery order, the administrative law judge may impose any of the following sanctions proportional to the party's failure to comply with the order:

- (1) Strike the relevant portion of a party's pleadings;
- (2) Preclude prehearing or discovery motions by that party;
- (3) Preclude admission of the relevant portion of a party's evidence at the hearing; or
- (4) Preclude the relevant portion of the testimony of that party's witnesses at the hearing.

#### **§13.221 Notice of hearing.**

(a) *Notice.* The administrative law judge must provide each party with notice of the date, time and location of the hearing at least 60 days before the hearing date.

(b) *Date, time, and location of the hearing.* The administrative law judge to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

(c) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

#### **§13.222 Evidence.**

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge must admit any relevant oral, documentary, or demonstrative evidence introduced by a party but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

#### **§13.223 Standard of proof.**

The administrative law judge must issue an initial decision or must rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

#### **§13.224 Burden of proof.**

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

#### **§13.225 Offer of proof.**

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

**§13.226 Public disclosure of information.**

(a) The administrative law judge may order that any information contained in the record be withheld from public disclosure. Any party or interested person may object to disclosure of information in the record by filing and serving a written motion to withhold specific information in accordance with §§ 13.210 and 13.211 respectively. A party may file a motion seeking to protect from public disclosure information contained in a document that the party is filing at the same time it files the document. The person or party must state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge must grant the motion to withhold if, based on the 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 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.* The administrative law judge, upon application by any party to the proceeding, may issue subpoenas requiring the attendance of witnesses or the production of documents or tangible things at a hearing or for the purpose of taking depositions, as permitted by law. A request for a subpoena must show its general relevance and reasonable scope. The

party must serve the subpoena on the witness or the holder of the documents or tangible items as permitted by applicable statute. A request for a subpoena must be filed and served in accordance with §§ 13.210 and 13.211, respectively. Absent good cause shown, the filing and service must be completed as follows:

(1) 15 days before a scheduled deposition under the subpoena; or

(2) 30 days before a scheduled hearing where attendance at the hearing is sought.

(b) *Motion to quash or modify the subpoena.* A party or any person upon whom a subpoena has been served may file in the FAA Hearing Docket a motion to quash or modify the subpoena and must serve a copy on the administrative law judge and each party at or before the time specified in the subpoena for compliance. The movant must describe, in detail, the basis for the motion 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 appropriate U.S. district court to seek judicial enforcement of the subpoena.

### **§13.229 Witness fees.**

(a) *General.* 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, must 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 allowances provided for under 28 U.S.C. 1821.

**§13.230 Record.**

(a) *Exclusive record.* The pleadings, transcripts of the hearing and prehearing conferences, exhibits admitted into evidence, rulings, motions, applications, requests, briefs, and responses thereto, 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 must be included in the record. Though only exhibits admitted into evidence are part of the record before an administrative law judge, evidence proffered but not admitted is also part of the record on appeal, as provided by § 13.225.

(b) *Examination and copying of record.* The parties may examine the record at the FAA Hearing Docket and may obtain copies of the record upon payment of applicable fees. Any other person may obtain copies of the releasable portions of the record in accordance with applicable law.

**§13.231 Argument before the administrative law judge.**

(a) *Arguments during the hearing.* During the hearing, the administrative law judge must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the administrative law judge must allow the parties to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of

the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Post-hearing briefs.* The administrative law judge may request written post-hearing briefs before the administrative law judge issues an initial decision in the proceedings if the administrative law judge finds that submission of written arguments would be reasonable. If a party files a written post-hearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give the parties a reasonable opportunity, but not more than 30 days after receipt of the transcript, to prepare and submit the briefs. A party must file and serve any post-hearing brief in accordance with §§ 13.210 and 13.211, respectively.

### **§13.232 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, as well as the grounds supporting those findings and conclusions, for all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, and the amount of any civil penalty found appropriate by the administrative law judge. The administrative law judge must also include 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's oral initial decision and order must be 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 post-hearing 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.

(d) *Reconsideration of an initial decision.* The FAA decisionmaker may treat a motion for reconsideration of an initial decision as a notice of appeal under § 13.233, and if the motion was filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker will issue a briefing schedule, as provided in § 13.218.

(e) *Order assessing civil penalty.* Unless appealed pursuant to §13.233, the initial decision issued by the administrative law judge is considered an order assessing civil penalty if the 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. The administrative law judge may not assess a civil penalty exceeding the amount sought in the complaint.

### **§13.233 Appeal from initial decision.**

(a) *Notice of appeal.* A party may appeal the administrative law judge's initial decision, and any decision not previously appealed to the FAA decisionmaker on interlocutory appeal pursuant to § 13.219, by filing a notice of appeal in accordance with § 13.210 no later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties. The party must serve a copy of the notice of appeal on each party in accordance with § 13.211. A party is not required to serve any documents under § 13.233 on the administrative law judge.

(b) *Issues on appeal.* In any appeal from a decision of an administrative law judge, the FAA decisionmaker considers 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.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal to the FAA decisionmaker no later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the parties by filing an appeal brief in accordance with § 13.210 and serving a copy on each other party in accordance with § 13.211.

(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. If the FAA decisionmaker grants an extension of time to perfect the appeal, the FAA decisionmaker must serve a letter confirming the extension of time on each party.

(2) *Written 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 written motion for an extension in accordance with § 13.210 and must serve a copy of the motion on each party under § 13.211. Any party may file a written response to the motion for extension no later than 10 days after service of the motion. 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 in accordance with § 13.210 and must serve a copy of the appeal brief on each party in accordance with § 13.211.

(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 transcript 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 with the FAA decisionmaker.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief in accordance with § 13.210 not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief must serve a copy of the reply brief on each party in accordance with § 13.211. 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 transcript 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. If the FAA decisionmaker grants an extension of time to file the reply brief, the FAA decisionmaker must serve a letter confirming the extension of time on each party.

(2) *Written 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 a written motion for an extension in accordance with § 13.210 and must serve a copy of the motion on each party in accordance with § 13.211. Any party choosing to respond to the motion must file and serve a written response to the motion no later than 10 days after service of the motion. 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 brief unless permitted by the FAA decisionmaker. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and must serve a copy of the petition on each party. The party may not file the additional brief with the petition. The FAA decisionmaker may grant leave 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 plus one copy of the appeal brief or reply brief, but only one copy if filing by email or fax, as provided in § 13.210.

(h) *Oral argument.* The FAA decisionmaker may 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 in an appeal brief or any argument in the reply brief if a party's objection or argument is based on evidence contained on the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, when considering the issues on appeal. 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. The FAA decisionmaker may assess a civil penalty but must not assess a civil penalty in an amount greater than that sought in the complaint.

(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. Unless a petition for review is filed pursuant to § 13.235, a final decision and order of the Administrator will be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is precedent in any other civil penalty action. 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.

**§13.234 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 in accordance with § 13.210 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 in accordance with § 13.211. A party is not required to serve any documents under § 13.234 on the administrative law judge. 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) *Number of copies.* The parties must file the original plus one copy of the petition or the reply to the petition, but only one copy if filing by email or fax, as provided in § 13.210.

(c) *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.

(d) *Repetitious and frivolous petitions.* The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any party replying to a petition to reconsider or modify must file the reply in accordance with §13.210 no later than 10 days after service of the petition on that party, and must also serve a copy of the reply on each party in accordance with § 13.211.

(f) *Effect of filing petition.* The filing of a timely petition under this section will stay the effective date of the FAA decisionmaker's decision and order on appeal until final disposition of the petition by the FAA decisionmaker.

(g) *FAA decisionmaker's decision on petition.* The FAA decisionmaker has discretion to grant or deny a petition to reconsider. The FAA decisionmaker will grant or deny a petition to reconsider within a reasonable time after receipt of the petition or receipt of the reply petition, if any. 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.

### **§13.235 Judicial review of a final decision and order.**

(a) In cases under the Federal aviation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 46110(a), and, as applicable, in 49 U.S.C. 46301(d)(7)(D)(iii), 46301(g), or 47532.

(b) In cases under the Federal hazardous materials transportation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 5127.

(c) A party seeking judicial review of a final order issued by the Administrator may file a petition for review in the United States Court of Appeals for the District of Columbia Circuit or

in the United States Court of Appeals for the circuit in which the party resides or has its principal place of business.

(d) The party must file the petition for review no later than 60 days after service of the Administrator's final decision and order.

**§ 13.236. Alternative dispute resolution.**

Parties may use mediation to achieve resolution of issues in controversy addressed by this subpart. Parties seeking alternative dispute resolution services may engage the services of a mutually acceptable mediator. The mediator must not participate in the adjudication under this subpart of any matter where he serves as a mediator. Mediation discussions and submissions will remain confidential consistent with the provisions of the Administrative Dispute Resolution Act and other applicable federal laws.

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