

Federal Aviation Administration, DOT**§ 13.111**

order of compliance or the order of immediate compliance. The Administrator's order includes the reasons for the action.

(h) In cases involving an order of immediate compliance, the Administrator's order on appeal is issued within ten days after the filing of the notice of appeal.

§ 13.85 Filing, service and computation of time.

Filing and service of documents under this subpart shall be accomplished in accordance with § 13.43 except service of orders of immediate compliance under § 13.81(b); and the periods of time specified in this subpart shall be computed in accordance with § 13.44.

§ 13.87 Extension of time.

(a) The official who issued the notice of proposed order of compliance, for good cause shown, may grant an extension of time to file any document specified in this subpart, except documents to be filed with the Administrator.

(b) Extensions of time to file documents with the Administrator may be granted by the Administrator upon written request, served upon all parties, and for good cause shown.

Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation**§ 13.101 Applicability.**

(a) This subpart applies to fact-finding investigations in which an order of investigation has been issued under § 13.3(c) or § 13.5(i) of this part.

(b) This subpart does not limit the authority of duly designated persons to issue subpoenas, administer oaths, examine witnesses and receive evidence in any informal investigation as provided for in sections 313 and 1004(a) of the Federal Aviation Act (49 U.S.C. 1354 and 1484(a)) and section 109(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1808(a)).

§ 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 that person—

(1) Petitions the Presiding Officer to participate as a party; and

(2) Is so situated that the disposition of the investigation may as a practical matter impair the ability to protect that person's interest unless allowed to participate as a party, and

(3) Is not adequately represented by existing parties.

§ 13.109 Convening the investigation.

The investigation shall be conducted at such place or places designated by the Presiding Officer, and as convenient to the parties involved as expeditious and efficient handling of the investigation permits.

§ 13.111 Subpoenas.

(a) Upon motion of the Presiding Officer, or upon the request of a party to the investigation, the Presiding Officer may issue a subpoena directing any person to appear at a designated time

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and place to testify or to produce documentary or physical evidence relating to any matter under investigation.

(b) Subpoenas shall be served by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered as the time when service is made.

(c) Subpoenas shall extend in jurisdiction throughout the United States or any territory or possession thereof.

§ 13.113 Noncompliance with the investigative process.

If any person fails to comply with the provisions of this subpart or with any subpoena or order issued by the Presiding Officer or the designee of the Presiding Officer, judicial enforcement may be initiated against that person under applicable statutes.

§ 13.115 Public proceedings.

(a) All investigative proceedings and depositions shall 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 such information, stating the grounds for such objection.

§ 13.117 Conduct of investigative proceeding or deposition.

(a) The Presiding Officer or the designee of 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 shall upon request be sent to that person's attorney of record.

§ 13.119 Rights of persons against self-incrimination.

(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 shall be compensated at the same rate as a witness appearing before a United States District Court.

§ 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. Such depositions shall be taken before the Presiding Officer or other person authorized to administer oaths and designated by the Presiding Officer. The testimony shall be reduced to writing by the person taking the deposition, or under the direction of that person, and where possible shall 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 shall issue a written report based on the record developed during the formal investigation, including a summary of principal conclusions. A summary of principal conclusions shall 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 shall be furnished to the parties to the investigation and filed in the public docket. Insertion of the report in the Public Docket shall constitute "entering of record" and publication as prescribed by section 313(b) of the Federal Aviation Act.

§ 13.129 Post-investigation action.

A decision on whether to initiate subsequent action shall 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 motion of the Presiding Officer, or on the motion of a party or a person testifying or producing evidence.

Subpart G—Rules of Practice in FAA Civil Penalty Actions

SOURCE: Amdt. 13-21, 55 FR 27575, July 3, 1990, unless otherwise noted.

§ 13.201 Applicability.

(a) This subpart applies to the following actions:

(1) A civil penalty action in which a complaint has been issued for an amount not exceeding \$50,000 for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), or a rule, regulation, or order issued thereunder.

(2) A civil penalty action in which a complaint has been issued for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*) and the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*), or a rule, regulation, or order issued thereunder.

(b) This subpart applies only to proceedings initiated after September 7, 1988. All other cases, hearings, or other proceedings pending or in progress before September 7, 1988, are not affected by the rules in this subpart.

(c) Notwithstanding the provisions of paragraph (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator:

(1) Which involves an amount in controversy in excess of \$50,000;

(2) Which is an *in rem* action or in which an *in rem* action based on the same violation has been brought;