

Federal Aviation Administration, DOT

§ 16.1

claims, cross-claims, and counter-claims.

§ 15.115 Payment.

After execution of the indemnification agreement, the FAA will submit the agreement to the United States Department of Justice and request payment, in accordance with the agreement, from the Judgment Fund.

PART 16—RULES OF PRACTICE FOR FEDERALLY-ASSISTED AIRPORT ENFORCEMENT PROCEEDINGS

Subpart A—General Provisions

Sec.

- 16.1 Applicability and description of part.
- 16.3 Definitions.
- 16.5 Separation of functions.

Subpart B—General Rules Applicable to Complaints, Proceedings Initiated by the FAA, and Appeals

- 16.11 Expedition and other modification of process.
- 16.13 Filing of documents.
- 16.15 Service of documents on the parties and the agency.
- 16.17 Computation of time.
- 16.19 Motions.

Subpart C—Special Rules Applicable to Complaints

- 16.21 Pre-complaint resolution.
- 16.23 Complaints, answers, replies, rebuttals, and other documents.
- 16.25 Dismissals.
- 16.27 Incomplete complaints.
- 16.29 Investigations.
- 16.31 Director's determinations after investigations.
- 16.33 Final decisions without hearing.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

- 16.101 Basis for the initiation of agency action.
- 16.103 Notice of investigation.
- 16.105 Failure to resolve informally.

Subpart E—Proposed Orders of Compliance

- 16.109 Orders terminating eligibility for grants, cease and desist orders, and other compliance orders.

Subpart F—Hearings

- 16.201 Notice and order of hearing.

- 16.202 Powers of a hearing officer.
- 16.203 Appearances, parties, and rights of parties.
- 16.207 Intervention and other participation.
- 16.209 Extension of time.
- 16.211 Prehearing conference.
- 16.213 Discovery.
- 16.215 Depositions.
- 16.217 Witnesses.
- 16.219 Subpoenas.
- 16.221 Witness fees.
- 16.223 Evidence.
- 16.225 Public disclosure of evidence.
- 16.227 Standard of proof.
- 16.229 Burden of proof.
- 16.231 Offer of proof.
- 16.233 Record.
- 16.235 Argument before the hearing officer.
- 16.237 Waiver of procedures.

Subpart G—Initial Decisions, Orders and Appeals

- 16.241 Initial decisions, orders, and appeals.
- 16.243 Consent orders.

Subpart H—Judicial Review

- 16.247 Judicial review of a final decision and order.

Subpart I—Ex Parte Communications

- 16.301 Definitions.
- 16.303 Prohibited ex parte communications.
- 16.305 Procedures for handling ex parte communications.
- 16.307 Requirement to show cause and imposition of sanction.

AUTHORITY: 49 U.S.C. 106(g), 322, 1110, 1111, 1115, 1116, 1718 (a) and (b), 1719, 1723, 1726, 1727, 40103(e), 40113, 40116, 44502(b), 46101, 46104, 46110, 47104, 47106(e), 47107, 47108, 47111(d), 47122, 47123-47125, 47151-47153, 48103.

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Subpart A—General Provisions

§ 16.1 Applicability and description of part.

(a) *General.* The provisions of this part govern all proceedings involving Federally-assisted airports, except for disputes between U.S. and foreign air carriers and airport proprietors concerning the reasonableness of airport fees covered by 14 CFR part 302, whether the proceedings are instituted by order of the FAA or by filing with the FAA a complaint, under the following authorities:

- (1) 49 U.S.C. 40103(e), prohibiting the grant of exclusive rights for the use of

### § 16.3

any landing area or air navigation facility on which Federal funds have been expended (formerly section 308 of the Federal Aviation Act of 1958, as amended).

(2) Requirements of the Anti-Head Tax Act, 49 U.S.C. 40116.

(3) The assurances contained in grant-in-aid agreements issued under the Federal Airport Act of 1946, 49 U.S.C. 1101 *et seq.* (repealed 1970).

(4) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Development Act of 1970, as amended, 49 U.S.C. 1701 *et seq.*

(5) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, 49 U.S.C. 47101 *et seq.*, specifically section 511(a), 49 U.S.C. 47107(a) and (b).

(6) Section 505(d) of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. 47113.

(7) Obligations contained in property deeds for property transferred pursuant to section 16 of the Federal Airport Act (49 U.S.C. 1115), section 23 of the Airport and Airway Development Act (49 U.S.C. 1723), or section 516 of the Airport and Airway Improvement Act (49 U.S.C. 47125).

(8) Obligations contained in property deeds for property transferred under the Surplus Property Act (49 U.S.C. 47151-47153).

(b) *Other agencies.* Where a grant assurance concerns a statute, executive order, regulation, or other authority that provides an administrative process for the investigation or adjudication of complaints by a Federal agency other than the FAA, persons shall use the administrative process established by those authorities. Where a grant assurance concerns a statute, executive order, regulation, or other authority that enables a Federal agency other than the FAA to investigate, adjudicate, and enforce compliance under those authorities on its own initiative, the FAA may defer to that Federal agency.

(c) *Other enforcement.* If a complaint or action initiated by the FAA involves a violation of the 49 U.S.C. subtitle VII or FAA regulations, except as specified in paragraphs (a)(1) and (a)(2) of this

### 14 CFR Ch. I (1-1-99 Edition)

section, the FAA may take investigative and enforcement action under 14 CFR part 13, "Investigative and Enforcement Procedures."

(d) *Effective date.* This part applies to a complaint filed with the FAA and to an investigation initiated by the FAA on or after December 16, 1996.

#### § 16.3 Definitions.

Terms defined in the Acts are used as so defined. As used in this part:

*Act* means a statute listed in § 16.1 and any regulation, agreement, or document of conveyance issued or made under that statute.

*Agency attorney* means the Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the Airports/Environmental Law Division of the Office of the Chief Counsel; the Assistant Chief Counsel and attorneys in an FAA region or center who represent the FAA during the investigation of a complaint or at a hearing on a complaint, and who prosecute on behalf of the FAA, as appropriate. An agency attorney shall not include the Chief Counsel; the Assistant Chief Counsel for Litigation, or any attorney on the staff of the Assistant Chief Counsel for Litigation, who advises the Associate Administrator regarding an initial decision of the hearing officer or any appeal to the Associate Administrator or who is supervised in that action by a person who provides such advice in an action covered by this part.

*Agency employee* means any employee of the U.S. Department of Transportation.

*Associate Administrator* means the Associate Administrator for Airports or a designee.

*Complainant* means the person submitting a complaint.

*Complaint* means a written document meeting the requirements of this part filed with the FAA by a person directly and substantially affected by anything allegedly done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

*Director* means the Director of the Office of Airport Safety and Standards.

*Director's determination* means the initial determination made by the Director following an investigation, which is a non-final agency decision.

*File* means to submit written documents to the FAA for inclusion in the Part 16 Airport Proceedings Docket or to a hearing officer.

*Final decision and order* means a final agency decision that disposes of a complaint or determines a respondent's compliance with any Act, as defined in this section, and directs appropriate action.

*Hearing officer* means an attorney designated by the FAA in a hearing order to serve as a hearing officer in a hearing under this part. The following are not designated as hearing officers: the Chief Counsel and Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the FAA region or center in which the noncompliance has allegedly occurred or is occurring; the Assistant Chief Counsel and attorneys in the Airports and Environmental Law Division of the FAA Office of the Chief Counsel; and the Assistant Chief Counsel and attorneys in the Litigation Division of the FAA Office of Chief Counsel.

*Initial decision* means a decision made by the hearing officer in a hearing under subpart F of this part.

*Mail* means U.S. first class mail; U.S. certified mail; and U.S. express mail.

*Noncompliance* means anything done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

*Party* means the complainant(s) and the respondent(s) named in the complaint and, after an initial determination providing an opportunity for hearing is issued under § 16.31 and subpart E of this part, the agency.

*Person* in addition to its meaning under 49 U.S.C. 40102(a)(33), includes a public agency as defined in 49 U.S.C. 47102(a)(15).

*Personal delivery* means hand delivery or overnight express delivery service.

*Respondent* means any person named in a complaint as a person responsible for noncompliance.

*Sponsor* means:

(1) Any public agency which, either individually or jointly with one or more other public agencies, has received Federal financial assistance for airport development or planning under the Federal Airport Act, Airport and Airway Development Act or Airport and Airway Improvement Act;

(2) Any private owner of a public-use airport that has received financial assistance from the FAA for such airport; and

(3) Any person to whom the Federal Government has conveyed property for airport purposes under section 13(g) of the Surplus Property Act of 1944, as amended.

#### § 16.5 Separation of functions.

(a) Proceedings under this part, including hearings under subpart F of this part, will be prosecuted by an agency attorney.

(b) After issuance of an initial determination in which the FAA provides the opportunity for a hearing, an agency employee engaged in the performance of investigative or prosecutorial functions in a proceeding under this part will not, in that case or a factually related case, participate or give advice in an initial decision by the hearing officer, or a final decision by the Associate Administrator or designee on written appeal, and will not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the hearing officer, the Associate Administrator on written appeal, or agency employees advising those officials in that capacity.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation advises the Associate Administrator regarding an initial decision, an appeal, or a final decision regarding any case brought under this part.