SUBCHAPTER B—PROCEDURAL RULES

PART 11—GENERAL RULEMAKING PROCEDURES

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EDITORIAL NOTE: Nomenclature changes to part 11 appear at 61 FR 18052, April 24, 1996.
Federal Aviation Administration, DOT

Subpart A—Rulemaking Procedures

§ 11.1 To what does this part apply?
This part applies to the issuance, amendment, and repeal of any regulation for which FAA ("we") follows public rulemaking procedures under the Administrative Procedure Act ("APA") (5 U.S.C. 553).

DEFINITION OF TERMS

§ 11.3 What is an advance notice of proposed rulemaking?
An advance notice of proposed rulemaking (ANPRM) tells the public that FAA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 11.5 What is a notice of proposed rulemaking?
A notice of proposed rulemaking (NPRM) proposes FAA’s specific regulatory changes for public comment and contains supporting information. It includes proposed regulatory text.

§ 11.7 What is a supplemental notice of proposed rulemaking?
On occasion, FAA may decide that it needs more information on an issue, or that we should take a different approach than we proposed. Also, we may want to follow a commenter’s suggestion that goes beyond the scope of the original proposed rule. In these cases, FAA may issue a supplemental notice of proposed rulemaking (SNPRM) to give the public an opportunity to comment further or to give us more information.

§ 11.9 What is a final rule?
A final rule sets out new or revised requirements and their effective date. It also may remove requirements. When preceded by an NPRM, a final rule will also identify significant substantive issues raised by commenters in response to the NPRM and will give the agency’s response.

§ 11.11 What is a final rule with request for comments?
A final rule with request for comment is a rule that the FAA issues in final (with an effective date) that invites public comment on the rule. We usually do this when we have not first issued an ANPRM or NPRM, because we have found that doing so would be impracticable, unnecessary, or contrary to the public interest. We give our reasons for our determination in the preamble. The comment period often ends after the effective date of the rule. A final rule not preceded by an ANPRM or NPRM is commonly called an “immediately adopted final rule.” We invite comments on these rules only if we think that we will receive useful information. For example, we would not invite comments when we are just making an editorial clarification or correction.

§ 11.13 What is a direct final rule?
A direct final rule is a type of final rule with request for comments. Our reason for issuing a direct final rule without an NPRM is that we would not expect to receive any adverse comments, and so an NPRM is unnecessary. However, to be certain that we are correct, we set the comment period to end before the effective date. If we receive an adverse comment or notice of intent to file an adverse comment, we then withdraw the final rule before it becomes effective and may issue an NPRM.

§ 11.15 What is a petition for exemption?
A petition for exemption is a request to FAA by an individual or entity asking for relief from the requirements of a current regulation.

§ 11.17 What is a petition for rulemaking?
A petition for rulemaking is a request to FAA by an individual or entity asking the FAA to adopt, amend, or repeal a regulation.

§ 11.19 What is a special condition?
A special condition is a regulation that applies to a particular aircraft design. The FAA issues special conditions when we find that the airworthiness
§ 11.21

regulations for an aircraft, aircraft engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature.

GENERAL

§ 11.21 What are the most common kinds of rulemaking actions for which FAA follows the Administrative Procedure Act?

FAA follows the Administrative Procedure Act (APA) procedures for these common types of rules:

(a) Rules found in the Code of Federal Regulations;
(b) Airworthiness directives issued under part 39 of this chapter; and
(c) Airspace Designations issued under various parts of this chapter.

§ 11.23 Does FAA follow the same procedures in issuing all types of rules?

Yes, in general, FAA follows the same procedures for all rule types. There are some differences as to which FAA official has authority to issue each type, and where you send petitions for FAA to adopt, amend, or repeal each type. Assume that the procedures in this subpart apply to all rules, except where we specify otherwise.

§ 11.25 How does FAA issue rules?

(a) The FAA uses APA rulemaking procedures to adopt, amend, or repeal regulations. To propose or adopt a new regulation, or to change a current regulation, FAA will issue one or more of the following documents. We publish these rulemaking documents in the Federal Register unless we name and personally serve a copy of a rule on every person subject to it. We also make all documents available to the public by posting them in the Federal Docket Management System at http://www.regulations.gov.

(1) An advance notice of proposed rulemaking (ANPRM).
(2) A notice of proposed rulemaking (NPRM).
(3) A supplemental notice of proposed rulemaking (SNPRM).
(4) A final rule.
(5) A final rule with request for comments.
(6) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

(1) The topic involved in the rulemaking document.
(2) FAA’s legal authority for issuing the rulemaking document.
(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations at a public meeting).
(4) Whom to call if you have questions about the rulemaking document.
(5) The date, time, and place of any public meetings FAA will hold to discuss the rulemaking document.
(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.


§ 11.27 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

Yes, the FAA obtains advice and recommendations from rulemaking advisory committees. One of these committees is the Aviation Rulemaking Advisory Committee (ARAC), which is a formal standing committee comprised of representatives of aviation associations and industry, consumer groups, and interested individuals. In conducting its activities, ARAC complies with the Federal Advisory Committee Act and the direction of FAA. We task ARAC with providing us with recommended rulemaking actions dealing with specific areas and problems. If we accept an ARAC recommendation to change an FAA rule, we ordinarily publish an NPRM using the procedures in this part. The FAA may establish other rulemaking advisory committees as needed to focus on specific issues for a limited period of time.

§ 11.29 May FAA change its regulations without first issuing an ANPRM or NPRM?

The FAA normally adds or changes a regulation by issuing a final rule after an NPRM. However, FAA may adopt, amend, or repeal regulations without
first issuing an ANPRM or NPRM in the following situations:

(a) We may issue a final rule without first requesting public comment if, for good cause, we find that an NPRM is impracticable, unnecessary, or contrary to the public interest. We place that finding and a brief statement of the reasons for it in the final rule. For example, we may issue a final rule in response to a safety emergency.

(b) If an NPRM would be unnecessary because we do not expect to receive adverse comment, we may issue a direct final rule.

§ 11.31 How does FAA process direct final rules?

(a) A direct final rule will take effect on a specified date unless FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period—generally 60 days after the direct final rule is published in the Federal Register. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule’s underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. We consider the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

(b) If FAA has not received an adverse comment or notice of intent to file an adverse comment, we will publish a confirmation document in the Federal Register, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

(c) If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the Federal Register before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter’s recommendation into another direct final rule or may publish a notice of proposed rulemaking.

§ 11.33 How can I track FAA’s rulemaking activities?

The best ways to track FAA’s rulemaking activities are with the docket number or the regulation identifier number.

(a) Docket ID. We assign a docket ID to each rulemaking document proceeding. Each rulemaking document FAA issues in a particular rulemaking proceeding, as well as public comments on the proceeding, will display the same docket ID. This ID allows you to search the Federal Docket Management System (FDMS) for information on most rulemaking proceedings. You can view and copy docket materials during regular business hours at the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Or you can view and download docketed materials through the Internet at http://www.regulations.gov. If you can’t find the material in the electronic docket, contact the person listed under FOR FURTHER INFORMATION CONTACT in the document you are interested in.

(b) Regulation identifier number. DOT publishes a semiannual agenda of all current and projected DOT rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations, published in the Federal Register in April and October of each year. The semiannual agenda tells the public about DOT’s—including FAA’s—regulatory activities. DOT assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the Federal Register and makes it easy for you to track those rulemaking proceedings in both the Federal Register and the semiannual regulatory agenda.

§ 11.35 Does FAA include sensitive security information and proprietary information in the Federal Docket Management System (FDMS)?

(a) Sensitive security information. You should not submit sensitive security information to the rulemaking docket, unless you are invited to do so in our request for comments. If we ask for this information, we will tell you in the specific document how to submit this information, and we will provide a separate non-public docket for it. For all proposed rule changes involving civil aviation security, we review comments as we receive them, before they are placed in the docket. If we find that a comment contains sensitive security information, we remove that information before placing the comment in the general docket.

(b) Proprietary information. When we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.


§ 11.37 Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?

The FAA includes most documents concerning Airworthiness Directives, airspace designations, or petitions handled in a region in the electronic docket. If the information isn’t in the docket, contact the person listed under FOR FURTHER INFORMATION CONTACT in the Federal Register document about the action.

§ 11.38 What public comment procedures does the FAA follow for Special Conditions?

Even though the Administrative Procedure Act does not require notice and comment for rules of particular applicability, FAA does publish proposed special conditions for comment. In the following circumstances we may not invite comment before we issue a special condition. If we don’t, we will invite comment when we publish the final special condition.

(a) The FAA considers prior notice to be impracticable if issuing a design approval would significantly delay delivery of the affected aircraft. We consider such a delay to be contrary to the public interest.

(b) The FAA considers prior notice to be unnecessary if we have provided previous opportunities to comment on substantially identical proposed special conditions, and we are satisfied that new comments are unlikely.

§ 11.39 How may I participate in FAA’s rulemaking process?

You may participate in FAA’s rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an ANPRM, NPRM, SNPRM, a final rule with request for comments, or a direct final rule. Follow the directions for commenting found in each rulemaking document.

(b) Ask that we hold a public meeting on any rulemaking, and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to adopt, amend, or repeal a regulation.

§ 11.40 Can I get more information about a rulemaking?

You can contact the person listed under FOR FURTHER INFORMATION CONTACT in the preamble of a rule. That person can explain the meaning and intent of a proposed rule, the technical aspects of a document, the terminology in a document, and can tell you our published schedule for the rulemaking process. We cannot give you information that is not already available to other members of the public. Department of Transportation policy on oral communications with the public during rulemaking appears in appendix 1 of this part.
Federal Aviation Administration, DOT

WRITTEN COMMENTS

§ 11.41 Who may file comments?
Anyone may file written comments about proposals and final rules that request public comments.

§ 11.43 What information must I put in my written comments?
(a) Your written comments must be in English and must contain the following:
   (1) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.
   (2) Your name and mailing address, and, if you wish, other contact information, such as a fax number, telephone number, or e-mail address.
   (3) Your information, views, or arguments, following the instructions for participation in the rulemaking document on which you are commenting.
(b) You should also include all material relevant to any statement of fact or argument in your comments, to the extent that the material is available to you and reasonable for you to submit. Include a copy of the title page of the document. Whether or not you submit a copy of the material to which you refer, you should indicate specific places in the material that support your position.

§ 11.45 Where and when do I file my comments?
(a) Send your comments to the location specified in the rulemaking document on which you are commenting. If you are asked to send your comments to the Federal Document Management System, you may send them in either of the following ways:
   (1) By mail to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
   (2) Through the Internet to http://www.regulations.gov.
   (3) In any other manner designated by FAA.
(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late-filed comments to the extent possible only if they do not significantly delay the rulemaking process.
(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the Federal Docket Management System Web site.

§ 11.47 May I ask for more time to file my comments?
Yes, if FAA grants your request for more time to file comments, we grant all persons the same amount of time. We will notify the public of the extension by a document in the Federal Register. If FAA denies your request, we will notify you of the denial. To ask for more time, you must file a written or electronic request for extension at least 10 days before the end of the comment period. Your letter or message must—
   (a) Show the docket number of the rule at the top of the first page;
   (b) State, at the beginning, that you are requesting an extension of the comment period;
   (c) Show that you have good cause for the extension and that an extension is in the public interest;
   (d) Be sent to the address specified for comments in the rulemaking document on which you are commenting.

PUBLIC MEETINGS AND OTHER PROCEEDINGS

§ 11.51 May I request that FAA hold a public meeting on a rulemaking action?
Yes, you may request that we hold a public meeting. FAA holds a public meeting when we need more than written comments to make a fully informed decision. Submit your written request to the address specified in the rulemaking document on which you are commenting. Specify at the top of your letter or message that you are requesting that the agency hold a public meeting. Submit your request no later than 30 days after our rulemaking notice. If we find good cause for a meeting, we will notify you and publish a
§ 11.53 What takes place at a public meeting?

A public meeting is a non-adversarial, fact-finding proceeding conducted by an FAA representative. Public meetings are announced in the Federal Register. We invite interested persons to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting.

§ 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?

(a) Using a petition for rulemaking, you may ask FAA to add a new regulation to title 14 of the Code of Federal Regulations (14 CFR) or ask FAA to amend or repeal a current regulation in 14 CFR.

(b) Using a petition for exemption, you may ask FAA to grant you relief from current regulations in 14 CFR.

§ 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) To submit a petition for rulemaking or exemption—

(1) By electronic submission, submit your petition for rulemaking or exemption to FAA through the Internet at http://www.regulations.gov, the Federal Docket Management System Web site. For additional instructions, you may visit http://www.faa.gov/regulations.

(2) By paper submission, send the original signed copy of your petition for rulemaking or exemption to this address: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Submit a petition for rulemaking or exemption from part 139 of this chapter—

(1) To the appropriate FAA airport field office in whose area your airport is, or will be, established; and

(2) To the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 or by electronic submission to this Internet address: http://www.regulations.gov.

(c) The FAA may designate other means by which you can submit petitions in the future.

(d) Submit your petition for exemption 120 days before you need the exemption to take effect.

§ 11.71 What information must I include in my petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address.

(2) An explanation of your proposed action and its purpose.

(3) The language you propose for a new or amended rule, or the language you would remove from a current rule.

(4) An explanation of why your proposed action would be in the public interest.

(5) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(6) Any specific facts or circumstances that support or demonstrate the need for the action you propose.

(b) In the process of considering your petition, we may ask that you provide information or data available to you about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.
§ 11.73 How does FAA process petitions for rulemaking?

After we have determined the disposition of your petition, we will contact you in writing about our decision. The FAA may respond to your petition for rulemaking in one of the following ways:

(a) If we determine that your petition justifies our taking the action you suggest, we may issue an NPRM or ANPRM. We will do so no later than 6 months after the date we receive your petition. In making our decision, we consider:

(1) The immediacy of the safety or security concerns you raise;
(2) The priority of other issues the FAA must deal with; and
(3) The resources we have available to address these issues.

(b) If we have issued an ANPRM or NPRM on the subject matter of your petition, we will consider your arguments for a rule change as a comment in connection with the rulemaking proceeding. We will not treat your petition as a separate action.

(c) If we have begun a rulemaking project in the subject area of your petition, we will consider your comments and arguments for a rule change as part of that project. We will not treat your petition as a separate action.

(d) If we have tasked ARAC to study the general subject area of your petition, we will ask ARAC to review and evaluate your proposed action. We will not treat your petition as a separate action.

(e) If we determine that the issues you identify in your petition may have merit, but do not address an immediate safety concern or cannot be addressed because of other priorities and resource constraints, we may dismiss your petition. Your comments and arguments for a rule change will be placed in a database, which we will examine when we consider future rulemaking.

§ 11.75 Does FAA invite public comment on petitions for rulemaking?

Generally, FAA does not invite public comment on petitions for rulemaking.

§ 11.77 Is there any additional information I must include in my petition for designating airspace?

In petitions asking FAA to establish, amend, or repeal a designation of airspace, including special use airspace, you must include all the information specified by §11.71 and also:

(a) The location and a description of the airspace you want assigned or designated;

(b) A complete description of the activity or use to be made of that airspace, including a detailed description of the type, volume, duration, time, and place of the operations to be conducted in the area;

(c) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if we grant the designation; and

(d) The name and location of the agency, office, facility, or person who would have authority to permit the use of the airspace when it was not in use for the purpose to which you want it assigned.

§ 11.81 What information must I include in my petition for an exemption?

You must include the following information in your petition for an exemption and submit it to FAA as soon as you know you need an exemption.

(a) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address;

(b) The specific section or sections of 14 CFR from which you seek an exemption;

(c) The extent of relief you seek, and the reason you seek the relief;

(d) The reasons why granting your request would be in the public interest; that is, how it would benefit the public as a whole;

(e) The reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal
§ 11.83 How can I operate under an exemption outside the United States?

If you want to be able to operate under your exemption outside the United States, you must request this when you petition for relief and give us the reason for this use. If you do not provide your reason or we determine that it does not justify this relief, we will limit your exemption to use within the United States. Before we extend your exemption for use outside the United States, we will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow you to do so, we will file a difference with ICAO. However, a foreign country still may not allow you to operate in that country without meeting the ICAO standard.

§ 11.85 Does FAA invite public comment on petitions for exemption?

Yes, FAA publishes information about petitions for exemption in the Federal Register. The information includes—

(a) The docket number of the petition;
(b) The citation to the rule or rules from which the petitioner requested relief;
(c) The name of the petitioner;
(d) The petitioner’s summary of the action requested and the reasons for requesting it; and
(e) A request for comments to assist FAA in evaluating the petition.

§ 11.87 Are there circumstances in which FAA may decide not to publish a summary of my petition for exemption?

The FAA may not publish a summary of your petition for exemption and request comments if you present or we find good cause why we should not delay action on your petition. The factors we consider in deciding not to request comment include:

(a) Whether granting your petition would set a precedent.
(b) Whether the relief requested is identical to exemptions granted previously.
(c) Whether our delaying action on your petition would affect you adversely.
(d) Whether you filed your petition in a timely manner.

§ 11.89 How much time do I have to submit comments to FAA on a petition for exemption?

The FAA states the specific time allowed for comments in the Federal Register notice about the petition. We usually allow 20 days to comment on a petition for exemption.

§ 11.91 How does FAA inform me of its decision on my petition for exemption?

The FAA will notify you in writing about its decision on your petition. A copy of this decision is also placed in the public docket. We will include the docket number associated with your petition in our letter to you.


§ 11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Yes, you may petition FAA to reconsider your petition denial. You must submit your request to the address to which you sent your original petition, and FAA must receive it within 60 days after we issued the denial. For us to accept your petition, show the following:

(a) That you have a significant additional fact and why you did not present it in your original petition;
(b) That we made an important factual error in our denial of your original petition; or
§ 11.103 What exemption relief may be available to federal, state, and local governments when operating aircraft that are not public aircraft?

The Federal Aviation Administration may grant a federal, state, or local government an exemption from part A of subtitle VII of title 49 United States Code, and any regulation issued under that authority that is applicable to an aircraft as a result of the Independent Safety Board Act Amendments of 1994, Public Law 103–411, if—

(a) The Administrator finds that granting the exemption is necessary to prevent an undue economic burden on the unit of government; and

(b) The Administrator certifies that the aviation safety program of the unit of government is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government.

(68 FR 25488, May 13, 2003)

Subpart B—Paperwork Reduction Act Control Numbers

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

(a) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires FAA to get approval from OMB for our information collection activities, and to list a record of those approvals in the FEDERAL REGISTER. This subpart lists the control numbers OMB assigned to FAA’s information collection activities.

(b) The table listing OMB control numbers assigned to FAA’s information collection activities follows:

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<th>Current OMB control number</th>
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APPENDIX 1 TO PART 11—ORAL COMMUNICATIONS WITH THE PUBLIC DURING RULEMAKING

1. What is an ex parte contact?

“Ex parte” is a Latin term that means “one sided,” and indicates that not all parties to an issue were present when it was discussed. An ex parte contact involving rulemaking is
any communication between FAA and someone outside the government regarding a specific rulemaking proceeding, before that proceeding closes. A rulemaking proceeding does not close until we publish the final rule or withdraw the NPRM. Because an ex parte contact excludes other interested persons, including the rest of the public, from the communication, it may give an unfair advantage to one party, or appear to do so.

2. Are written comments to the docket ex parte contacts?

Written comments submitted to the docket are not ex parte contacts because they are available for inspection by all members of the public.

3. What is DOT policy on ex parte contacts?

It is DOT policy to provide for open development of rules and to encourage full public participation in rulemaking actions. In addition to providing opportunity to respond in writing to an NPRM and to appear and be heard at a hearing, DOT policy encourages agencies to contact the public directly when we need factual information to resolve questions of substance. It also encourages DOT agencies to be receptive to appropriate contacts from persons affected by or interested in a proposed action. But under some circumstances an ex parte contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety can affect public confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of ex parte contacts permitted and the procedures we follow depend on when the contact occurs in the rulemaking process.

4. What kinds of ex parte contacts does DOT policy permit before we issue an ANPRM, NPRM, Supplemental NPRM, or immediately adopted final rule?

The DOT policy authorizes ex parte contacts that we need to obtain technical and economic information. We need this information to decide whether to issue a regulation and what it should say. Each contact that influences our development of the regulation is noted in the preamble. For multiple contacts that are similar, we may provide only a general discussion. For contacts not discussed in the preamble, we place a report discussing each contact or group of related contacts in the rulemaking docket when it is opened.

5. Does DOT policy permit ex parte contacts during the comment period?

No, during the comment period, the public docket is available for written comments from any member of the public. These comments can be examined and responded to by any interested person. Because this public forum is available, DOT policy discourages ex parte contacts during the comment period. They are not necessary to collect the information the agency needs to make its decision.

6. What if the FAA believes it needs to meet with members of the public to discuss the proposal?

If the FAA determines that it would be helpful to invite members of the public to make oral presentations to it regarding the proposal, we will announce a public meeting in the Federal Register.

7. Are any oral contacts concerning the proposal permitted during the comment period?

If you contact the agency with questions regarding the proposal during the comment period, we can only provide you with information that has already been made available to the general public. If you contact the agency to discuss the proposal, you will be told that the proper avenue of communication during the comment period is a written communication to the docket.

8. If a substantive ex parte contact does occur during the comment period, what does FAA do?

While FAA tries to ensure that FAA personnel and the public are aware of DOT policy, substantive ex parte contacts do occasionally occur, for example, at meetings not intended for that purpose. In such a case, we place a summary of the contact and a copy of any materials provided at the meeting in the rulemaking docket. We encourage participants in such a meeting to file written comments in the docket.

9. Does DOT policy permit ex parte contacts the comment period has closed?

DOT policy strongly discourages ex parte contacts initiated by commenters to discuss their position on the proposal once the comment period has closed. Such a contact at this time would be improper, since other interested persons would not have an opportunity to respond. If we need further information regarding a comment in the docket, we may request this from a commenter. A record of this contact and the information provided is placed in the docket. If we need to make other contacts to update factual information, such as economic data, we will disclose this information in the final rule docket or in the economic studies accompanying it, which are available in the docket.

10. What if FAA needs to meet with interested persons to discuss the proposal after the comment period has closed?

If FAA determines that it would be helpful to meet with a person or group after the close of the comment period to discuss a
course of action to be taken, we will announce the meeting in the Federal Register. We will also consider reopening the comment period. If an inappropriate ex parte contact does occur after the comment period closes, a summary of the contact and a copy of any material distributed during meeting will be placed in the docket if it could be seen as influencing the rulemaking process.

11. Under what circumstances will FAA reopen the comment period?

If we receive an ex parte communication after the comment period has closed that could substantially influence the rulemaking, we may reopen the comment period. DOT policy requires the agency to carefully consider whether the substance of the contact will give the commenter an unfair advantage, since the rest of the public may not see the record of the contact in the docket. When the substance of a proposed rule is significantly changed as a result of such an oral communication, DOT policy and practice requires that the comment period be reopened by issuing a supplemental NPRM in which the reasons for the change are discussed.

12. What if I have important information for FAA and the comment period is closed?

You may always provide FAA with written information after the close of the comment period and it will be considered if time permits. Because contacts after the close of the comment may not be seen by other interested persons, if they substantially and specifically influence the FAA’s decision, we may need to reopen the comment period.

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

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(a) Any person may file a complaint with the Administrator with respect to anything done or omitted to be done by any person in contravention of any provision of any Act or of any regulation or order issued thereunder, as to matters within the jurisdiction of the Administrator. 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 filed for the purpose of seeking an appropriate order or other enforcement action;

(2) Be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Enforcement Docket (AGC–10), 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 Act or 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 and telephone number of the person filing the complaint; and

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

(c) Complaints which do not meet the requirements of paragraph (b) of this section will be considered reports under §13.1.

(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 shall be filed in accordance with the provisions of part 16 of this chapter, except in the case of complaints, investigations, and proceedings initiated before December 16, 1996, the effective date of part 16 of this chapter.
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(e) Any complaint filed against a member of the Armed Forces of the United States acting in the performance of official duties shall be referred to the Secretary of the Department concerned for action in accordance with the procedures set forth in §13.21 of this part.

(f) The person named in the complaint shall file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Administrator shall determine if there are reasonable grounds for investigating the complaint.

(h) If the Administrator determines that a complaint does not state facts which warrant an investigation or action, the complaint may be dismissed without a hearing and the reason for the dismissal shall be given, in writing, to the person who filed the complaint and the person named in the complaint.

(i) 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. Each person named in the complaint shall be advised which official has been delegated the responsibility under §13.3(b) or (c) for conducting the investigation.

(j) 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.

(k) The complaint and other pleadings and official FAA records relating to the disposition of the complaint are maintained in current docket form in the Enforcement Docket (AGC–10), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591. Any interested person may examine any docketed material at that office, at any time after the docket is established, except material that is ordered withheld from the public under applicable law or regulations, and may obtain a photostatic or duplicate copy upon paying the cost of the copy.

[Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, 1502); sec. 6(c), Dept. of Transportation Act (49 U.S.C. 1655(c))]


§ 13.7 Records, documents and reports.

Each record, document and report that the Federal Aviation 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.

Subpart B—Administrative Actions

§ 13.11 Administrative disposition of certain violations.

(a) If it is determined that a violation or an alleged violation of the Federal Aviation Act of 1958, or an order or regulation issued under it, or of the Hazardous Materials Transportation Act, or an order or regulation issued under it, does not require legal enforcement action, an appropriate official of the FAA field office responsible for processing the enforcement case or other appropriate FAA official may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may be taken by issuing the alleged violator—

(1) A “Warning Notice” which 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” which confirms the FAA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken.
Subpart C—Legal Enforcement Actions

§ 13.13 Consent orders.

(a) At any time before the issuance of an order under this subpart, the official who issued the notice and the person subject to the notice may agree to dispose of the case by the issuance of a consent order by the official.

(b) A proposal for a consent order, submitted to the official who issued the notice, under this section must include—

(1) A proposed order;
(2) An admission of all jurisdictional facts;
(3) An express waiver of the right to further procedural steps and of all rights to judicial review; and
(4) An incorporation by reference of the notice and an acknowledgment that the notice may be used to construe the terms of the order.

(c) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

§ 13.14 Civil penalties: General.

(a) Any person who violates any of the following statutory provisions, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in 49 U.S.C. chapter 463 for each violation:

(1) Chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117);
(2) Chapter 441 (except section 44109);
(3) Section 44502(b) or (c); or
(4) Chapter 447 (except sections 44717 and 44719–44723);

(b) The authority of the Administrator, under 49 U.S.C. chapter 463, to seek a civil penalty for a violation cited in §13.14(a), 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; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel. This delegation applies to cases involving:

(1) An amount in controversy in excess of:

(i) $50,000, if the violation was committed by any person before December 12, 2003;
(ii) $400,000, if the violation was committed by a person other than an individual or small business concern on or after December 12, 2003;
(iii) $50,000, if the violation was committed by an individual or small business concern on or after December 12, 2003; or
(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 minimum and maximum amounts of civil penalties for violations of the statutory provisions specified in paragraphs (a) and (b) of this section, or rules, regulations, or orders issued thereunder, are periodically adjusted for inflation in accordance with the formula established in 28 U.S.C. 2461 note and implemented in 14 CFR part 13, subpart H.

§ 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, under 49 U.S.C. chapter 463, to seek a civil penalty for a violation cited in §13.14(a), 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; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel. This delegation applies to cases involving:

(1) An amount in controversy in excess of:

(i) $50,000, if the violation was committed by any person before December 12, 2003;
(ii) $400,000, if the violation was committed by a person other than an individual or small business concern on or after December 12, 2003;
(iii) $50,000, if the violation was committed by an individual or small business concern on or after December 12, 2003; or
(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
§ 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 these procedures 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.

(b) District court jurisdiction. Notwithstanding the provisions of paragraph (a) of this section, the United States district courts have exclusive jurisdiction of any civil penalty action initiated by the FAA for violations described in those paragraphs, under 49 U.S.C. 46301(d)(4), if—

(1) The amount in controversy is more than $50,000 for a violation committed by any person before December 12, 2003;

(2) The amount in controversy is more than $400,000 for a violation committed by a person other than an individual or small business concern on or after December 12, 2003;

(3) The amount in controversy is more than $50,000 for a violation committed by an individual or a small business concern on or after December 12, 2003;

(4) The action is in rem or another action in rem based on the same violation has been brought;
(5) The action involves an aircraft subject to a lien that has been seized by the Government; or
(6) Another action has been brought for an injunction based on the same violation.

(c) Hazardous materials violations. The FAA may assess a civil penalty against any person who knowingly commits an act in violation of 49 U.S.C. chapter 51 or a regulation prescribed or order issued under that chapter, under 49 U.S.C. 5123 and 49 CFR 1.47(k). An order assessing a civil penalty for a violation under 49 U.S.C. chapter 51, or a rule, regulation, or order issued thereunder, 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) Such other matters as justice may require.

(d) Order assessing civil penalty. 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. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits or agrees to submit a civil penalty for a violation.
(2) An order assessing civil penalty may be issued if 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.
(3) Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of 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.

(e) Notice of proposed civil penalty. A civil penalty action is initiated by
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sending a notice of proposed civil penalty to the person charged with a violation or to the agent for services for the person under 49 U.S.C. 46103. A notice of proposed civil penalty will be sent to the individual charged with a violation or to the president of the corporation or company charged with a violation. In response to a notice of proposed civil penalty, a corporation or 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 shall—

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 shall 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, in which case a complaint shall be filed with the hearing docket clerk.

(g) Final notice of proposed civil penalty. A final notice of proposed civil penalty may be issued after participation in informal procedures provided in paragraph (f)(2) of this section or failure to respond in a timely manner to a notice of proposed civil penalty. A final notice of proposed civil penalty will be sent to the individual charged with a violation, to the president of the corporation or company charged with a violation, or a person previously designated in writing by the individual, corporation, or company to receive documents in that civil penalty action. If not previously done in response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. 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 informal 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 shall 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 shall be issued in that amount; or

(ii) Request a hearing, in which case a complaint shall be filed with the hearing docket clerk.

(h) Request for a hearing. Any person charged with a violation may request a hearing, pursuant to paragraph (f)(3) or paragraph (g)(2)(ii) of this section, to be conducted in accordance with the procedures in subpart G of this part. A person requesting a hearing shall file a written request for a hearing with the hearing docket clerk, using the appropriate address set forth in §13.200(a) of this part, and shall mail a copy of the
§ 13.17 Seizure of aircraft.

(a) Under section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473), 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

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request to the agency attorney. The request for a hearing may be in the form of a letter but must be dated and signed by the person requesting a hearing. The request for a hearing may be typewritten or may be legibly handwritten.

(i) Hearing. If the person charged with a violation requests a hearing pursuant to paragraph (f)(3) or paragraph (g)(2)(i) of this section, the original complaint shall be filed with the hearing docket clerk and a copy shall be sent to the person requesting the hearing. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge shall issue, either orally on the record or in writing, a final decision, including the reasons for the decision, that contains findings or conclusions on the allegations contained, and the civil penalty sought, in the complaint.

(j) Appeal. Either party may appeal the administrative law judge’s initial decision to the FAA decisionmaker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to § 13.233 of subpart G, the effectiveness of the initial decision is stayed until a final decision and order of the Administrator have been entered on the record. The FAA decisionmaker shall review the record and issue a final decision and order of the Administrator that affirm, modify, or reverse the initial decision. The FAA decisionmaker may assess a civil penalty but shall not assess a civil penalty in an amount greater than that sought in the complaint.

(k) Payment. A person shall pay a civil penalty by sending a certified check or money order, payable to the Federal Aviation Administration, to the agency attorney.

(l) 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 provided under the law to collect the penalty.

(m) A party may seek review only of a final decision and order of the FAA decisionmaker involving a violation of the Federal aviation statute or the Federal hazardous materials transportation law. Judicial review is in the United States Court of Appeals for the District of Columbia Circuit or the United States court of appeals for the circuit in which the party resides or has the party’s principal place of business as provided in §13.235 of this part. Neither an initial decision or an order issued by an administrative law judge that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action, may be appealed under any of those sections.

(n) Compromise. The FAA may compromise the amount of any civil penalty imposed under this section, under 49 U.S.C. 5123(e), 46031(f), 46303(b), 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) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees not to make a finding of violation. Under such agreement, a compromise order is issued following the payment of the agreed-on amount or the signing of a promissory note. The compromise order 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 shall not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) An agency attorney may compromise the amount of a civil penalty proposed in a notice, assessed in an order, or imposed in a compromise order.

Chief Counsel, may summarily seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or operator.

(b) Each person seizing an aircraft under this section shall place 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 persons 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 believed, or judicially determined, 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 by a Federal court for a proven violation.

(d) The Chief Counsel, or the Regional Counsel or Assistant Chief Counsel for the region or area in which an aircraft is seized under this section, immediately sends a report to the United States District Attorney for the judicial district in which it was seized, requesting the District 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 whenever—

(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 to enforce a lien against the aircraft, or the United States District Attorney for the judicial district concerned notifies the FAA that the District Attorney refuses to institute those proceedings; or
(3) A bond in the amount and with the sureties prescribed by the Chief Counsel, the Regional Counsel, or the Assistant Chief Counsel 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 violation of 49 U.S.C. chapter 51, or a rule, regulation, or order issued thereunder.

(2) District court jurisdiction. Notwithstanding the provisions of paragraph (a)(1) of this section, the United States 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, 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.
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(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.** (1) The authority of the Administrator under 49 U.S.C. 46301(d)(5), to initiate and assess civil penalties is delegated to the Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(2) The authority of the Administrator to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties is delegated to the Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(3) The authority of the Administrator to compromise the amount of a civil penalty under 49 U.S.C. 46301(f) is delegated to the Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(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-on 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.

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

4. Request that an order be issued in accordance with the notice of proposed assessment 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 assesses 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) **Exhaustion of administrative remedies.** An individual substantially affected by an order of the NTSB or the Administrator may petition for review only of a final decision and order of the National Transportation Safety Board to a court of appeals of the United States for the circuit in which the individual charged resides or has his or her principal place of business or the United States Court of Appeals for the District of Columbia Circuit, under 49 U.S.C. 46110 and 46301(d)(6). Neither an order of assessment that has not been appealed to the National Transportation Board, nor an order compromising a civil penalty action, may be appealed under those sections.

(i) **Compromise.** The FAA may compromise any civil penalty action initiated under this section, in accordance with 49 U.S.C. 46301(f).

1. An agency attorney may compromise any civil penalty action where an individual charged with a violation agrees to pay a civil penalty and the

(a) Under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), the Administrator may reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, and may re-examine any civil airman. Under section 501(e) of the FA Act, any Certificate of Aircraft Registration may be suspended or revoked by the Administrator for any cause that renders the aircraft ineligible for registration.

(b) If, as a result of such a reinspection re-examination, or other investigation made by the Administrator under section 609 of the FA Act, the Administrator determines that the public interest and safety in air commerce requires it, the Administrator may issue an order amending, 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. This authority may be exercised for remedial purposes in cases involving the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) or regulations issued under that Act. This authority is also exercised by the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, and the Aeronautical Center Counsel. If the Administrator finds that any aircraft registered under Part 47 of this chapter is ineligible for registration, the Administrator issues an order suspending or revoking that certificate. This authority as to aircraft found ineligible for registration is also exercised by each Regional Counsel, the Aeronautical Center Counsel, and the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office.

(c) Before issuing an order under paragraph (b) of this section, the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, or the Aeronautical Center Counsel advises the certificate holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked. The holder may, by checking the appropriate box on the form that is sent to the holder with the notice of proposed certificate action, elect to—
§ 13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.

(a) This section applies to orders of compliance, cease and desist orders, orders of denial, and other orders issued by the Administrator to carry out the provisions of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, or the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987. This section does not apply to orders issued pursuant to section 602 or section 609 of the Federal Aviation Act of 1958, as amended.

(b) Unless the Administrator determines that an emergency exists and safety in air commerce requires the immediate issuance of an order under this section, the person subject to the order shall be provided with notice prior to issuance.

(c) Within 30 days after service of the notice, the person subject to the order may reply in writing or request a hearing in accordance with Subpart D of this part.

(d) If a reply is filed, as to any charges not dismissed or not subject to a consent order, the person subject to the order may, within 10 days after receipt of notice that the remaining charges are not dismissed, request a hearing in accordance with Subpart D of this part.

(e) Failure to request a hearing within the period provided in paragraphs (c) or (d) of this section—

(1) Constitutes a waiver of the right to appeal and the right to a hearing, and

(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice, or as modified as
§ 13.21 Military personnel.

If a report made under this part indicates that, while performing official duties, a member of the Armed Forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. Ch. 47), has violated the Federal Aviation Act of 1958, or a regulation or order issued under it, the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, and the Aeronautical Center Counsel send a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

§ 13.23 Criminal penalties.

(a) Sections 902 and 1203 of the Federal Aviation Act of 1958 (49 U.S.C. 1472 and 1523), provide criminal penalties for any person who knowingly and willfully violates specified provisions of that Act, or any regulation or order issued under those provisions. Section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)) provides for a criminal penalty of a fine of not more than $25,000, imprisonment for not more than five years, or both, for any person who willfully violates a provision of that Act or a regulation or order issued under it.

(b) If an inspector or other employee of the FAA becomes aware of a possible violation of any criminal provision of the Act, or any regulation or order issued under it, the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, and the Aeronautical Center Counsel send a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

(1) Discard the notice; or
(2) Issue an order.

(i) Any person filing an appeal authorized by paragraph (g) of this section shall file an appeal brief with the Administrator within 40 days after the date of issuance of the order.

(j) On appeal the Administrator reviews the available 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.

(k) For good cause shown, requests for extensions of time to file any document under this section may be granted by—

(1) The official who issued the order, if the request is filed prior to the designation of a Hearing Officer; or
(2) The Hearing Officer, if the request is filed prior to the filing of a notice of appeal; or
(3) The Administrator, if the request is filed after the filing of a notice of appeal.

(l) Except in the case of an appeal from the decision of a Hearing Officer, the authority of the Administrator under this section is also exercised by the Chief Counsel, Deputy Chief Counsel, each Assistant Chief Counsel, each Regional Counsel, and the Aeronautical Center Counsel (as to matters under Title V of the Federal Aviation Act of 1958).
§ 13.25 Injunctions.

(a) Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of the Federal Aviation Act of 1958, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, or, with respect to the transportation or shipment by air of any hazardous materials, in any act or practice constituting a violation of the Hazardous Materials Transportation Act, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, or, in the investigatory jurisdiction of another Federal agency, he or she shall immediately report it to that agency according to standard FAA practices.

§ 13.27 Final order of Hearing Officer in certificate of aircraft registration proceedings.

(a) If, in proceedings under section 501(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1401), the Hearing Officer determines that the aircraft is ineligible for a Certificate of Aircraft Registration, the Hearing Officer shall suspend or revoke the respondent's certificate, as proposed in the notice of proposed certificate action.

(b) If the final order of the Hearing Officer makes a decision on the merits, it shall contain a statement of the findings and conclusions of law on all material issues of fact and law. If the Hearing Officer finds that the allegations of the notice have been proven, but that no sanction is required, the Hearing Officer shall make appropriate findings and issue an order terminating the notice. If the Hearing Officer finds that the allegations of the notice have not been proven, the Hearing Officer
§ 13.29 Civil penalties: Streamlined enforcement procedures for certain security violations.

This section may be used, at the agency’s discretion, in enforcement actions involving individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage where the amount of the proposed civil penalty is less than $5,000. In these cases, sections 13.16(a), 13.16(c), and 13.16 (f) through (l) of this chapter are used, as well as paragraphs (a) through (d) of this section:

(a) Delegation of authority. The authority of the Administrator, under 49 U.S.C. 46301, to initiate the assessment of civil penalties for a violation of 49 U.S.C. Subtitle VII, or a rule, regulation, or order issued thereunder, is delegated to the regional Civil Aviation Security Division Manager and the regional Civil Aviation Security Deputy Division Manager for the purpose of issuing notices of violation in cases involving violations of 49 U.S.C. Subtitle VII and the FAA’s regulations by individuals presenting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage. This authority may not be delegated below the level of the regional Civil Aviation Security Deputy Division Manager.

(b) Notice of violation. A civil penalty action is initiated by sending a notice of violation to the person charged with the violation. The notice of violation 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 violation, the person charged with a violation shall:

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

(2) Submit to the agency attorney identified in the material accompanying the notice any 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 penalty amount is not warranted by the circumstances; or

(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; or

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

(3) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

(c) Final notice of violation and civil penalty assessment order. A final notice of violation and civil penalty assessment order (“final notice and order”) may be issued after participation in any informal proceedings as provided in paragraph (b)(2) of this section, or after failure of the respondent to respond in a timely manner to a notice of violation. A final notice and order will be sent to the individual charged with a violation. A final notice and order will contain 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 any informal procedures, may reflect a modified allegation or proposed civil penalty.

A final notice and order may be issued—

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

(2) If the parties participated in any informal procedures under paragraph (b)(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 violation.

(d) Order assessing civil penalty. An order assessing civil penalty may be issued after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

1. An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, the amount of civil penalty proposed in the notice of violation.

2. An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, an agreed-upon amount of civil penalty that is not reflected in either the notice of violation or the final notice and order.

3. The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty when the person charged with a violation submits the amount of the proposed civil penalty that is reflected in the final notice and order.

4. The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty 16 days after receipt of the final notice and order, unless not later than 15 days after receipt of the final notice and order, the person charged with a violation does one of the following—

(i) Submits an agreed-upon amount of civil penalty that is not reflected in the final notice and order, in which case an order assessing civil penalty or a compromise order shall be issued in that amount; or

(ii) Requests a hearing in which case a complaint shall be filed with the hearing docket clerk.

5. Unless an appeal is filed with the FAA decisionmaker in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

[Doc. No. 27873, 61 FR 44155, Aug. 28, 1996]
§ 13.37 Hearing Officer's powers.

Any 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 and take depositions or cause them to be taken;
(f) Rule on offers of proof;
(g) Receive evidence;
(h) Regulate the course of 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; and
(k) Issue decisions, make findings of fact, make assessments, and issue orders, as appropriate.

§ 13.39 Disqualification of Hearing Officer.

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

§ 13.41 [Reserved]

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

(a) Copies of all pleadings, motions, and documents filed with the Hearing Docket must be served upon all parties to the proceedings by the person filing them.
(b) Service may be made by personal delivery or by mail.
(c) A certificate of service shall accompany all documents when they are tendered for filing and shall consist of a certificate of personal delivery or a certificate of mailing, executed by the person making the personal delivery or mailing the document.

(d) Whenever proof of service by mail is made, the date of mailing or the date as shown on the postmark shall be the date of service, and where personal service is made, the date of personal delivery shall be the date of service.
(e) The date of filing is the date the document is actually received.

§ 13.44 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 after which the designated period of time begins to run 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 legal holiday for the FAA, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(b) Upon written request filed with the Hearing Docket and served upon all parties, and for good cause shown, a Hearing Officer may grant an extension of time to file any documents specified in this subpart.

§ 13.45 Amendment of notice and answer.

At any time more than 10 days before the date of hearing, any party may amend his or her notice, answer, or other pleading, by filing the amendment with the Hearing Officer and serving a copy of it on each other party. After that time, amendments may be allowed only in the discretion of the Hearing Officer. If an amendment to an initial pleading has been allowed, the Hearing Officer shall allow the other parties a reasonable opportunity to answer.

§ 13.47 Withdrawal of notice or request for hearing.

At any time before the hearing, the FAA counsel may withdraw the notice of proposed action, and the party requesting the hearing may withdraw the request for hearing.
§ 13.49 Motions.

(a) Motion to dismiss for insufficiency. A respondent who requests a formal hearing may, in place of an answer, file a motion to dismiss for failure of the allegations in the notice of proposed action to state a violation of the FA Act or of this chapter or to show lack of qualification of the respondent. If the Hearing Officer denies the motion, the respondent shall file an answer within 10 days.

(b) [Reserved]

(c) Motion for more definite statement. The certificate holder may, in place of an answer, file a motion that the allegations in the notice be made more definite and certain. If the Hearing Officer grants the motion, the FAA counsel shall comply within 10 days after the date it is granted. If the Hearing Officer denies the motion the certificate holder shall file an answer within 10 days after the date it is denied.

(d) Motion for judgment on the pleadings. After the pleadings are closed, either party may move for a judgment on the pleadings.

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

(f) Motion for production of documents. Upon motion of any party showing good cause, the Hearing Officer may, in the manner provided by Rule 34, Federal Rules of Civil Procedure, order any party to produce any designated document, paper, book, account, letter, photograph, object, or other tangible thing, that is not privileged, that constitutes or contains evidence relevant to the subject matter of the hearings, and that is in the party's possession, custody, or control.

(g) Consolidation of motions. A party who makes a motion under this section shall join with it all other motions that are then available to the party. Any objection that is not so raised is considered to be waived.

(h) Answers to motions. Any party may file an answer to any motion under this section within 5 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 Depositions.

After the respondent has filed a request for hearing and an answer, either party may take testimony by deposition in accordance with section 1004 of the Federal Aviation Act of 1958 (49 U.S.C. 1484) or Rule 26, Federal Rules of Civil Procedure.

§ 13.55 Notice of hearing.

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

§ 13.57 Subpoenas and witness fees.

(a) The Hearing Officer to whom a case is assigned may, upon application by any party to the proceeding, issue subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence at a hearing or for the purpose of taking depositions. However, the application for producing evidence must show its general relevance and reasonable scope. This paragraph does not apply to the attendance of FAA employees or to the production of documentary evidence in the custody of such an employee at a hearing.

(b) A person who applies for the production of a document in the custody of an FAA employee must follow the
§ 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 orders of denial, the burden of proof is upon the FAA counsel.

(c) The Hearing 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 Hearing 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 ground for such objection.

§ 13.61 Argument and submittals.

The Hearing Officer shall 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, in the discretion of the Hearing Officer, allow each party to submit written proposed findings and conclusions and supporting reasons for them.

§ 13.63 Record.

The testimony and exhibits presented at a hearing, together with all papers, requests, and rulings filed in the proceedings are the exclusive basis for the issuance of an order. Either party may obtain a transcript from the official reporter upon payment of the fees fixed therefor.

Subpart E—Orders of Compliance Under the Hazardous Materials Transportation Act

§ 13.71 Applicability.

Whenever the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel 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, 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 order of immediate compliance, he may conduct proceedings pursuant to section 109 of that Act (49 U.S.C. 1808) to determine the nature and extent of the violation, and may thereafter issue an order directing compliance.


§ 13.73 Notice of proposed order of compliance.

A compliance order proceeding commences when the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel sends the alleged violator a notice of proposed order of
§ 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) File a reply in writing with the official who issued the notice; or
(2) Request a hearing in accordance with Subpart D of this part.
(b) If a reply is filed, as to any charges not dismissed or not subject to a consent order of compliance, the alleged violator may, within 10 days after receipt of notice that the remaining charges are not dismissed, 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—
(1) Constitutes a waiver of the right to a hearing and the right to an appeal, and
(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice and to issue an appropriate order directing compliance, without further notice or proceedings.

§ 13.77 Consent order of compliance.
(a) At any time before the issuance of an order of compliance, the official who issued the notice and the alleged violator may agree to dispose of the case by the issuance of a consent order of compliance by the official.
(b) A proposal for a consent order submitted to the official who issued the notice under this section must include—
(1) A proposed order of compliance;
(2) An admission of all jurisdictional facts;
(3) An express waiver of right to further procedural steps and of all rights to judicial review;
(4) An incorporation by reference of the notice and an acknowledgement that the notice may be used to construe the terms of the order of compliance; and
(5) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

§ 13.79 Hearing.
If an alleged violator requests a hearing in accordance with §13.75, the procedure of Subpart D of this part applies. At the close of the hearing, the Hearing Officer, on the record or subsequently in writing, sets forth the Hearing Officer's findings and conclusion and the reasons therefor, and either—
(a) Dismisses the notice of proposed order of compliance; or
(b) Issues an order of compliance.

§ 13.81 Order of immediate compliance.
(a) Notwithstanding §§13.73 through 13.79, the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel may issue an order of immediate compliance, which is effective upon issuance, if the person who issues the order finds that—
(1) There is strong probability that a violation is occurring or is about to occur;
(2) The violation poses a substantial risk to health or to safety of life or property; and
(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under §§13.73 through 13.79.
(b) An order of immediate compliance is served promptly upon the person against whom the order is issued by telephone or telegram, and a written statement of the relevant facts and the legal basis for the order, including the findings required by paragraph (a) of this section, is served promptly by personal service or by mail.
(c) The official who issued the order of immediate compliance may rescind or suspend the order if it appears that
§ 13.83 Appeal.

(a) Any party to the hearing may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the order.

(b) Any person against whom an order of immediate compliance has been issued in accordance with §13.81 or the official who issued the order of immediate compliance may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within three days after the date of issuance of the order by the Hearing Officer.

(c) Unless the Administrator expressly so provides, the filing of a notice of appeal does not stay the effectiveness of an order of immediate compliance.

(d) If a notice of appeal is not filed from the order of compliance issued by a Hearing Officer, such order is the final agency order of compliance.

(e) Any person filing an appeal authorized by paragraph (a) of this section shall file an appeal brief with the Administrator within 40 days after the date of the issuance of the order, and serve a copy on the other party. Any reply brief must be filed within 20 days after service of the appeal brief. A copy of the reply brief must be served on the appellant.

(f) Any person filing an appeal authorized by paragraph (b) of this section shall file an appeal brief with the Administrator with the notice of appeal and serve a copy on the other party. Any reply brief must be filed within 3 days after receipt of the appeal brief. A copy of the reply brief must be served on the appellant.

(g) On appeal the Administrator reviews the available record of the proceeding, and issues an order dismissing, reversing, modifying or affirming the 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 investigatory 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 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 for 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.
§ 13.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, shall be prosecuted by an agency attorney.

(b) An agency employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action shall not, in that case or a factually-related case, participate or give advice in a decision by the administrative law judge or by the FAA decisionmaker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel, the Deputy Chief Counsel for Policy and Adjudication, and the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation will advise the FAA decisionmaker regarding an initial decision or any appeal of 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 may file a notice of appearance in the action, in the manner provided in §13.210 of this subpart, and

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, corporation, or company named in a complaint.

Mail includes U.S. certified mail, U.S. registered mail, or use of an overnight express courier service.

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 the Administrator in a civil penalty action shall be considered an order assessing civil penalty if 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 shall be 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 or the Federal Aviation Administration (FAA).

Personal delivery includes hand-delivery or use of a contract or express messenger service. “Personal delivery” does not include the use of Government interoffice mail service.
§ 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 shall be submitted not later than 10 days before the hearing.

(b) If the administrative law judge finds that intervention will not unduly broaden the issues or delay the proceedings, the administrative law judge may grant a motion for leave to intervene if the person will be bound by any order or decision entered in the action or the person has a property, financial, or other legitimate interest that may not be addressed adequately by the parties. The administrative law judge may determine the extent to which an intervenor may participate in the proceeding.

§ 13.207 Certification of documents.

(a) Signature required. The attorney of record, the party, or the party’s representative shall sign each document tendered for filing with the hearing docket clerk, the administrative law judge, the FAA decisionmaker on appeal, or served on each 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
§ 13.208 Complaint.

(a) Filing. The agency attorney shall file the original and one copy of the complaint with the hearing docket clerk, or may file a written motion pursuant to §13.218(f)(2)(i) of this subpart instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing. The agency attorney should suggest a location for the hearing when filing the complaint.

(b) Service. An agency attorney shall personally deliver or mail a copy of the complaint to 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.

(c) Contents. A complaint shall 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 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) of this subpart.


§ 13.209 Answer.

(a) Writing required. A respondent shall file a written answer to the complaint, or may file a written motion pursuant to §13.208(d) or §13.218(f)(1–4) of this subpart instead of filing an answer, not later than 30 days after service of the complaint. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten.

(b) Filing and address. A person filing an answer shall personally deliver or mail the original and one copy of the answer for filing with the hearing docket clerk, not later than 30 days after service of the complaint to the Hearing Docket at the appropriate address set forth in §13.210(a) of this subpart. The person filing an answer should suggest a location for the hearing when filing the answer.
§ 13.210 Filing of documents.

(a) Address and method of filing. A person tendering a document for filing shall personally deliver or mail the signed original and one copy of each document to the Hearing Docket using the appropriate address:

(1) If delivery is in person, or via expedited courier service: Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430.

(2) If delivery is via U.S. Mail: Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430, Wilbur Wright Building—Suite 2W1000.

(b) Date of filing. A document shall be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

§ 13.211 Service of documents.

(a) General. A person shall serve a copy of any document filed with the Hearing Docket on each party at the time of filing. Service on a party’s attorney of record or a party’s designated representative may be considered adequate service on the party.

(b) Type of service. A person may serve documents by personal delivery or by mail.

(c) Certificate of service. A person may attach a certificate of service to a document tendered for filing with the hearing docket clerk. A certificate of service shall consist of a statement, dated and signed by the person filing the document, that the document was personally delivered or mailed to each party on a specific date.

(d) Date of service. The date of service shall be the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no
§ 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, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or a legal holiday. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§ 13.213 Extension of time.

(a) Oral requests. The parties may agree to extend for a reasonable period the time for filing a document under this subpart. If the parties agree, the administrative law judge shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the hearing docket clerk. The administrative law judge may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) Written motion. A party shall file a written motion for an extension of time with the administrative law judge not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) Failure to rule. If the administrative law judge fails to rule on a written 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 shall file the amendment with the administrative law judge and shall serve a copy of the amendment on all parties to the proceeding.

(b) Time. A party shall file an amendment to a complaint or an answer within the following:

(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 shall allow a reasonable time,
§ 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 shall dismiss the proceedings under this subpart with prejudice.

§ 13.216 Waivers.

Waivers of any rights provided by statute or regulation shall be in writing or by stipulation made at a hearing and entered into the record. The parties shall 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, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) Form and content of schedule. If the parties agree to a joint procedural or discovery schedule, one of the parties shall file the joint schedule with the administrative law judge, setting forth the dates to which the parties have agreed, and shall serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any 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 shall sign the original joint schedule to be filed with the administrative law judge.

(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) Order establishing joint schedule. The administrative law judge shall approve the joint schedule filed by the parties. One party shall submit a draft order establishing a joint schedule to the administrative law judge to be signed by the administrative law judge and filed with the hearing docket clerk.

(e) Disputes. The administrative law judge shall resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(1) Sanctions for failure to comply with joint schedule. If a party fails to comply with the administrative law judge's order establishing a joint schedule, the administrative law judge may direct that party to comply with a motion to discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the administrative law judge may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing, or

(4) Preclude that 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 shall do so by motion. A party shall comply with the requirements of this section when filing a motion with the administrative law judge. A party shall serve a copy of each motion on each party.

(b) Form and contents. A party shall state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in
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support of a motion, the party shall 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 shall file any prehearing motion, and shall serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally or in writing unless the administrative law judge directs otherwise.

(d) Answers to motions. Any party may file an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing or in writing, within a reasonable time determined by the administrative law judge.

(e) Rulings on motions. The administrative law judge shall rule on all motions as follows:

(1) Discovery motions. The administrative law judge shall resolve all pending discovery motions not later than 10 days before the hearing.

(2) Prehearing motions. The administrative law judge shall 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 shall serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge shall issue rulings and orders in writing and shall serve a copy of the ruling or order on each party.

(3) Motions made during the hearing. The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(i) Specific motions. A party may file the following motions with the administrative law judge:

(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 shall 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) of this subpart.

(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 shall file the complaint and shall serve a copy of the complaint 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 file an appeal pursuant to §13.233 of this subpart. If required by the decision on appeal, the agency attorney shall file a complaint and shall serve a copy of the complaint on each party not later than 10 days after service of the decision on appeal.

(ii) Motion to dismiss a complaint. A respondent may file a motion to dismiss a complaint instead of filing an answer. If the motion to dismiss is not granted, the respondent shall file an answer and shall serve a copy of the answer 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 pursuant to §13.233 of this subpart. If required by the decision on appeal, the respondent shall file an answer and shall serve a
copy of the answer 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 shall set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and shall 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 shall 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 shall strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent shall file an answer and shall serve a copy of the answer 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 shall 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 shall 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, or irrelevant matter in a pleading. A party shall file a motion to strike with the administrative law judge and shall serve a copy on each party 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.

(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 shall 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 show 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 with the administrative law judge and shall serve a copy on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but shall make the motion before the administrative law judge files an initial decision in the proceedings.

(i) Motion and supporting affidavit. A party shall 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 shall submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) Answer. A party shall 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 shall 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 shall withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge shall 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) of this subpart.


§ 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 of this subpart.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the administrative law judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. 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 shall grant an interlocutory appeal for cause 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 with the FAA decisionmaker, 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 of this subpart.

(3) A ruling or order by the administrative law judge in violation of §13.205(b) of this subpart.

(d) *Procedure.* A party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, and shall 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, whichever is appropriate. A party shall file a reply brief, if any, with the FAA decisionmaker and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief.

The FAA decisionmaker shall 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 preliminarily 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 is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and response with the administrative law judge or the hearing docket clerk. In the event of a discovery dispute, a party shall attach a copy of these documents in support of a motion made under this section.

(c) **Service on the agency.** A party shall 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 shall respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days of 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 the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party 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 if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) **Limiting discovery.** The administrative law judge shall 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 with the administrative law judge and shall serve a copy of the motion for a confidential order on each party.

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 shall 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 shall 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 shall not disclose the information in any manner and the parties shall 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 with the administrative law judge.
§ 13.220Judge and shall serve a copy of the motion for protective order on each 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 shall supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.
(2) A party shall 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' testimony.
(3) A party shall 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. The following rules apply to depositions taken pursuant to this section:

(1) Form. A deposition shall be taken on the record and reduced to writing. The person being deposed shall 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 shall 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 shall take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) Notice of deposition. A party shall 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, on the administrative law judge, on the hearing docket clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. If a subpoena duces tecum is to be served on the person to be examined, the party shall attach a copy of the subpoena duces tecum that describes the materials to 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 shall answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party shall 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 shall not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory shall be counted as a separate interrogatory.

(2) A party shall 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 shall grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.
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 shall set forth each request for admission separately. A party shall serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

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.

Response. A party may object to a request for admission and shall 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 shall 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 rule or that the response is insufficient, the matter is deemed admitted.

Effect of admission. Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

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, 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.

Failure to comply with a discovery order or order to compel. If a party fails to comply with a discovery order or an order to compel, the administrative law judge, limited to the extent of the party’s failure to comply with the discovery order or motion to compel, may:

1. Strike that portion of a party’s pleadings;
2. Preclude prehearing or discovery motions by that party;
3. Preclude admission of that portion of a party’s evidence at the hearing; or
4. Preclude that portion of the testimony of that party’s witnesses at the hearing.

Notice of hearing.

Notice. The administrative law judge shall give each party at least 60 days notice of the date, time, and location of the hearing.

Date, time, and location of the hearing. The administrative law judge to whom the proceedings have been assigned shall set a reasonable date, time, and location for the hearing. The administrative law judge shall 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 shall 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.

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 shall admit any oral, documentary, or demonstrative evidence introduced by a party but shall 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 shall issue an initial decision or shall 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 shall 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 evidence.

(a) The administrative law judge may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the administrative law judge and serving a copy of the motion on each party. The party shall state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge shall grant the motion to withhold information in the record 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 that the information is not otherwise required to be made available to the public.

§ 13.227 Expert or opinion witnesses.

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

§ 13.228 Subpoenas.

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

(b) Motion to quash or modify the subpoena. A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena with the administrative law
Federal Aviation Administration, DOT  § 13.231

judge at or before the time specified in the subpoena for compliance. The applicant shall describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

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

[Docket No. 18884, 44 FR 63723, Nov. 5, 1979, as amended at 70 FR 6238, Feb. 18, 2005; 72 FR 68474, Dec. 5, 2007]

§ 13.231 Argument before the administrative law judge.

(a) Arguments during the hearing. During the hearing, the administrative law judge shall 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 parties are entitled 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) Posthearing briefs. The administrative law judge may request written posthearing 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 posthearing brief, the party shall 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 shall give the parties a reasonable opportunity, not more than 30 days after receipt of the
transcript, to prepare and submit the briefs.

§ 13.232 Initial decision.

(a) Contents. The administrative law judge shall issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge shall include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge’s discretion, the amount of any civil penalty found appropriate by the administrative law judge, and 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 shall 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 shall issue the initial decision and order orally 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 posthearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge shall serve a copy of any written initial decision on each party.

(d) Order assessing civil penalty. Unless appealed pursuant to §13.233 of this subpart, the initial decision issued by the administrative law judge shall be 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.

§ 13.233 Appeal from initial decision.

(a) Notice of appeal. A party may appeal the initial decision, and any decision not previously appealed pursuant to §13.219, by filing a notice of appeal with the FAA decisionmaker. A party must file the notice of appeal in the FAA Hearing Docket using the appropriate address listed in §13.210(a). A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and shall serve a copy of the notice of appeal on each party.

(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 that support the appeal.

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

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 appellate docket clerk shall 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 with the FAA decisionmaker and shall serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.
(d) Appeal briefs. A party shall file the appeal brief with the FAA decision-maker and shall serve a copy of the appeal brief on each party.

(1) A party shall set forth, in detail, the party’s specific objections to the initial decision or rulings in the appeal brief. A party also shall 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 shall 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 with the FAA decisionmaker not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief shall serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party shall 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 appellate docket clerk shall 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 with the FAA decisionmaker and shall serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) Other briefs. The FAA decisionmaker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and shall 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 shall file the original appeal brief or the original reply brief, and two copies of the brief, with the FAA decisionmaker.

(h) Oral argument. The FAA decisionmaker has sole discretion to permit oral argument on the appeal. On the FAA decisionmaker’s own initiative or upon written motion by any party, the FAA decisionmaker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) Waiver of objections on appeal. If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party’s objection 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.

(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.
§ 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 shall file a petition to reconsider or modify with the FAA decisionmaker not later than 30 days after service of the FAA decisionmaker’s final decision and order on appeal and shall serve a copy of the petition on each party. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA decisionmaker.

(b) Form and number of copies. A party shall file a petition to reconsider or modify, in writing, with the FAA decisionmaker. The party shall file the original petition with the FAA decisionmaker and shall serve a copy of the petition on each party.

(c) Contents. A party shall 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 shall describe these allegations and shall 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 shall 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 shall 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 other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply with the FAA decisionmaker. A party shall serve a copy of the reply on each party.

(f) Effect of filing petition. Unless otherwise ordered by the FAA decisionmaker, filing of a petition pursuant to this section will not stay or delay the effective date of the FAA decisionmaker’s final decision and order on appeal and shall not toll the time allowed for judicial review.

(g) FAA decisionmaker’s decision on petition. The FAA decisionmaker has sole discretion to grant or deny a petition to reconsider or modify. The FAA decisionmaker will grant or deny a petition
to reconsider or modify 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.


§ 13.305 Cost of living adjustments of civil monetary penalties.

(a) Except for the limitation to the initial adjustment to statutory maximum civil monetary penalties or range of minimum and maximum civil monetary penalties set forth in paragraph (c) of this section, the inflation adjustment under this subpart is determined by increasing the maximum civil monetary penalty or range of minimum and maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under paragraph (a) of this section is rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;
(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;
(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;
(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;
(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and
(6) Multiple of $25,000 in the case of penalties greater than $200,000.

(b) For purposes of paragraph (a) of this section, the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

(c) Limitation on initial adjustment. The initial adjustment of a civil monetary penalty under this subpart does not exceed 10 percent of the civil penalty amount.

(d) Inflation adjustment. Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are adjusted for inflation as follows: Minimum and Maximum Civil Penalties-Adjusted for Inflation.
<table>
<thead>
<tr>
<th>United States Code cite</th>
<th>Civil monetary penalty description</th>
<th>Minimum penalty amount</th>
<th>New or adjusted minimum penalty amount</th>
<th>Maximum penalty amount when last set or adjusted pursuant to law</th>
<th>New or adjusted maximum penalty amount</th>
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<tbody>
<tr>
<td>49 U.S.C. 5123(a), subparagraph (1)</td>
<td>Violation of hazardous materials transportation law</td>
<td>$250 per violation, reset 8/10/2005</td>
<td>No change</td>
<td>$50,000 per violation, reset 8/10/2005</td>
<td>$55,000 per violation.</td>
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<tr>
<td>49 U.S.C. 5123(a), subparagraph (2)</td>
<td>Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.</td>
<td>$450 per violation, reset 8/10/2005</td>
<td>No change</td>
<td>$50,000 per violation, reset 8/10/2005</td>
<td>$55,000 per violation.</td>
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<tr>
<td>49 U.S.C. 5123(a), subparagraph (3)</td>
<td>Violation of hazardous materials transportation law relating to training.</td>
<td>N/A</td>
<td>N/A</td>
<td>$25,000 per violation, reset 12/12/2003</td>
<td>No change.</td>
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<tr>
<td>49 U.S.C. 46301(a)(1)</td>
<td>Violation by a person other than an individual or small business concern under 49 CFR 46301(a)(1)(A) or (B).</td>
<td>N/A</td>
<td>N/A</td>
<td>$1,100 per violation, reset 12/12/2003</td>
<td>No change.</td>
</tr>
<tr>
<td>49 U.S.C. 46301(a)(1)</td>
<td>Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).</td>
<td>N/A</td>
<td>N/A</td>
<td>$1,100 per violation, reset 12/12/2003</td>
<td>No change.</td>
</tr>
<tr>
<td>49 U.S.C. 46301(a)(3)</td>
<td>Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.</td>
<td>N/A</td>
<td>N/A</td>
<td>Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.</td>
<td>No change.</td>
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<tr>
<td>49 U.S.C. 46301(a)(5)(A)</td>
<td>Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).</td>
<td>N/A</td>
<td>N/A</td>
<td>$11,000 per violation, adjusted 6/15/2006</td>
<td>No change.</td>
</tr>
<tr>
<td>49 U.S.C. 46301(a)(5)(B)(i)</td>
<td>Violation by an individual or small business concern related to the transportation of hazardous materials.</td>
<td>N/A</td>
<td>N/A</td>
<td>$11,000 per violation, adjusted 6/15/2006</td>
<td>No change.</td>
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<td>49 U.S.C. 46301(a)(5)(B)(ii)</td>
<td>Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.</td>
<td>N/A</td>
<td>N/A</td>
<td>$11,000 per violation, adjusted 6/15/2006</td>
<td>No change.</td>
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<td>49 U.S.C. 46301(a)(5)(B)(iii)</td>
<td>Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.</td>
<td>N/A</td>
<td>N/A</td>
<td>$11,000 per violation, adjusted 6/15/2006</td>
<td>No change.</td>
</tr>
<tr>
<td>United States Code cite</td>
<td>Civil monetary penalty description</td>
<td>Minimum penalty amount</td>
<td>New or adjusted minimum penalty amount</td>
<td>Maximum penalty amount when last set or adjusted pursuant to law</td>
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<td>49 U.S.C. 46301(b)</td>
<td>Tampering with a smoke alarm device</td>
<td>N/A</td>
<td>N/A</td>
<td>$2,200 per violation, adjusted 1/21/1997.</td>
<td>$3,200 per violation.</td>
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<td>49 U.S.C. 46302</td>
<td>Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.</td>
<td>N/A</td>
<td>N/A</td>
<td>$11,000 per violation, adjusted 1/21/1997.</td>
<td>$16,000 per violation.</td>
</tr>
<tr>
<td>49 U.S.C. 46318</td>
<td>Interference with cabin or flight crew</td>
<td>N/A</td>
<td>N/A</td>
<td>$27,500, adjusted 6/15/2006.</td>
<td>No change.</td>
</tr>
<tr>
<td>49 U.S.C. 46319</td>
<td>Permanent closure of an airport without providing sufficient notice. Violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.</td>
<td>N/A</td>
<td>N/A</td>
<td>$11,000 per day, adjusted 6/15/2006. See 49 U.S.C. 46301(a)(1)(A) and (a)(5), above.</td>
<td>No change.</td>
</tr>
<tr>
<td>49 U.S.C. 47531</td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
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</tr>
</tbody>
</table>
Subpart I—Flight Operational Quality Assurance Programs

§ Flight Operational Quality Assurance Program: Prohibition against use of data for enforcement purposes.

(a) Applicability. This section applies to any operator of an aircraft who operates such aircraft under an approved Flight Operational Quality Assurance (FOQA) program.

(b) Definitions. For the purpose of this section, the terms—

(1) Flight Operational Quality Assurance (FOQA) program means an FAA-approved program for the routine collection and analysis of digital flight data gathered during aircraft operations, including data currently collected pursuant to existing regulatory provisions, when such data is included in an approved FOQA program.

(2) FOQA data means any digital flight data that has been collected from an individual aircraft pursuant to an FAA-approved FOQA program, regardless of the electronic format of that data.

(3) Aggregate FOQA data means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data from multiple aircraft operations.

(c) Requirements. In order for paragraph (e) of this section to apply, the operator must submit, maintain, and adhere to a FOQA Implementation and Operation Plan that is approved by the Administrator and which contains the following elements:

(1) A description of the operator’s plan for collecting and analyzing flight recorded data from line operations on a routine basis, including identification of the data to be collected;

(2) Procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety;

(3) Procedures for providing the FAA with aggregate FOQA data;

(4) Procedures for informing the FAA as to any corrective action being undertaken pursuant to paragraph (c)(2) of this section.

(d) Submission of aggregate data. The operator will provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

(e) Enforcement. Except for criminal or deliberate acts, the Administrator will not use an operator’s FOQA data or aggregate FOQA data in an enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator.

(f) Disclosure. FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of part 193 of this chapter.

(g) Withdrawal of program approval. The Administrator may withdraw approval of a previously approved FOQA program for failure to comply with the requirements of this chapter. Grounds for withdrawal of approval may include, but are not limited to—

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety; or

(2) Failure to correct a continuing pattern of violations following notice by the agency; or also

(3) Willful misconduct or willful violation of the FAA regulations in this chapter.
Subpart B—Information Required From Applicants

14.10 Contents of application.
14.11 Net worth exhibit.
14.12 Documentation of fees and expenses.

Subpart C—Procedures for Considering Applications

14.20 When an application may be filed.
14.21 Filing and service of documents.
14.22 Answer to application.
14.23 Reply.
14.24 Comments by other parties.
14.25 Settlement.
14.26 Further proceedings.
14.27 Decision.
14.28 Review by FAA decisionmaker.
14.29 Judicial review.
14.30 Payment of award.

SOURCE: Docket No. 25958, 54 FR 46199, Nov. 1, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 14.01 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (the Act), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (adversary adjudications) before the Federal Aviation Administration (FAA). An eligible party may receive an award when it prevails over the FAA, unless the agency’s position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the FAA Decisionmaker will use to make them. As used hereinafter, the term “agency” applies to the FAA.

§ 14.02 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the FAA under 49 CFR part 17 and the Acquisition Management System (AMS). These are adjudications under 5 U.S.C. 554, in which the position of the FAA is represented by an attorney or other representative who enters an appearance and participates in the proceeding. This subpart applies to proceedings under 49 U.S.C. 46301, 46302, and 46303 and to the Default Adjudicative Process under part 17 of this chapter and the AMS.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(c) Fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which such party has unreasonably protracted the proceedings.

§ 14.03 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term “party” is defined in 5 U.S.C. 504(b)(1)(B) and 5 U.S.C. 551(3). The applicant must show that it meets all conditions or eligibility set out in this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary adjudication was initiated; and

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees at the time the adversary adjudication was initiated; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees at the time the adversary adjudication was initiated.
(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interest.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the ALJ or adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the ALJ or adjudicative officer may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible if not itself eligible for an award.

§ 14.04 Standards for awards.

(a) A prevailing applicant may receive an award for attorney fees and other expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. Whether or not the position of the FAA was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which was made in the civil action for which fees and other expenses are sought. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel, who may avoid an award by showing that the agency's position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 14.05 Allowance fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under this part may exceed $125 per hour, or such rate as prescribed by 5 U.S.C. 504. No award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the ALJ or adjudicative officer shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

[54 FR 46199, Nov. 1, 1989, as amended by Amdt. 14–03, 64 FR 32935, June 18, 1999]
§ 14.10 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant’s net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates) at the time the adversary adjudication was initiated. However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant’s belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) If the applicant is a partnership, corporation, association, organization, or sole owner of an unincorporated business, the application shall state that the applicant did not have more than 500 employees at the time the adversary adjudication was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

§ 14.11 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates when the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant’s and its affiliates’ assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge
§ 14.20 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case later than 30 days after the FAA Decisionmaker’s final disposition of the proceeding, or service of the order of the Administrator in a proceeding under the AMS.

(b) If review or reconsideration is sought or taken of a decision to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this part, final disposition means the later of:

1. Under part 17 of this chapter and the AMS, the date on which the order of the Administrator is served;
2. The date on which an unappealed initial decision becomes administratively final;
3. Issuance of an order disposing of any petitions for reconsideration of the FAA Decisionmaker’s final order in the proceeding;
4. If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or
5. Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

§ 14.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceedings by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

Subpart C—Procedures for Considering Applications

may require an applicant to file additional information to determine the eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of the net worth exhibit, or any part of it, may submit that portion of the exhibit directly to the ALJ or adjudicative officer in a sealed envelope labeled “Confidential Financial Information,” accompanied by a motion to withhold the information.

1. The motion shall describe the information sought to be withheld and explain, in detail, why it should be exempt under applicable law or regulation, why public disclosure would adversely affect the applicant, and why disclosure is not required in the public interest.

2. The net worth exhibit shall be served on the FAA counsel, but need not be served on any other party to the proceeding.

3. If the ALJ or adjudicative officer finds that the net worth exhibit, or any part of it, should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the FAA’s established procedures.

[54 FR 46199, Nov. 1, 1989, as amended by Amdt. 14–03, 64 FR 32936, June 18, 1999]
§ 14.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 14.11(b) for confidential financial information. Where the proceeding was held under part 17 of this chapter and the AMS, the application shall be filed with the FAA’s attorney and with the Office of Dispute Resolution for Acquisition.


§ 14.22 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of the section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the FAA’s counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the ALJ or adjudicative officer upon request by the FAA’s counsel and the applicant.

§ 14.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 14.26.

§ 14.24 Comments by other parties.

Any party to a proceeding other than the applicant and the FAA’s counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the ALJ or adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.


§ 14.25 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 14.26 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the written record; however, on request of either the applicant or agency counsel, or on his or her own initiative, the ALJ or adjudicative officer assigned to the matter may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why
§ 14.27 Decision.

(a) The ALJ shall issue an initial decision on the application within 60 days after completion of proceedings on the application.

(b) An adjudicative officer in a proceeding under part 17 of this chapter and the AMS shall prepare a findings and recommendations for the Office of Dispute Resolution for Acquisition.

(c) A decision under paragraph (a) or (b) of this section shall include written findings and conclusions on the applicant's eligibility and status as prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FAA's position was substantially justified, or whether special circumstances make an award unjust.


§ 14.28 Review by FAA decisionmaker.

(a) In proceedings other than those under part 17 of this chapter and the AMS, either the applicant or the FAA counsel may seek review of the initial decision on the fee application in accordance with subpart G of part 13 of this chapter, specifically §13.233. Additionally, the FAA Decisionmaker may decide to review the decision on his/her own initiative. If neither the applicant nor the FAA's counsel seeks review within 30 days after the decision is issued, it shall become final. Whether to review a decision is a matter within the discretion of the FAA Decisionmaker. If review is taken, the FAA Decisionmaker will issue a final decision on the application or remand the application to the ALJ who issue the initial fee award determination for further proceedings.

(b) In proceedings under part 17 of this chapter and the AMS, the adjudicative officer shall prepare findings and recommendations for the Office of Dispute Resolution for Acquisition with recommendations as to whether or not an award should be made, the amount of the award, and the reasons therefor. The Office of Dispute Resolution for Acquisition shall submit a recommended order to the Administrator after the completion of all submissions related to the EAJA application. Upon the Administrator's action, the order shall become final, and may be reviewed under 49 U.S.C. 46110.

PART 15—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

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15.1 Scope of regulations.
15.3 Administrative claim, when presented; appropriate office.
15.5 Administrative claim, who may file.
15.7 Administrative claims; evidence and information to be submitted.
15.9 Investigation and examination.

Subpart B—Indemnification Under Section 1118 of the Federal Aviation Act of 1958

15.101 Applicability.
15.103 Exclusions.
15.105 Filing of requests for indemnification.
15.107 Notification requirements.
15.111 Conduct of litigation.
15.113 Indemnification agreements.
15.115 Payment.


Subpart A—General Procedures

SOURCE: Docket No. 25264, 52 FR 18171, May 13, 1987, unless otherwise noted.

§ 15.1 Scope of regulations.

(a) These regulations apply to claims asserted under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to, or loss of, property, or for personal injury or death, alleged to have occurred by reason of the incident. A claim which should have been presented to the FAA but which was mistakenly filed with another Federal agency, is deemed presented to the FAA on the date the claim is received by the FAA at a place designated in paragraph (b) of this section. A claim addressed to, or filed with, the FAA by mistake will be transferred to the appropriate Federal agency, if that agency can be determined, or returned to the claimant.

(b) Claims shall be delivered or mailed to the Assistant Chief Counsel, Litigation Division, AGC–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, or alternatively, may be mailed or delivered to the Regional Counsel in any of the FAA Regional Offices or the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office.

(c) Claim forms are available at each location listed in paragraph (b) of this section.

(d) A claim presented in accordance with this section may be amended by the claimant at any time prior to final FAA action or prior to the exercise of the claimant’s option, under 28 U.S.C. 2675(a), to deem the agency’s failure to make a final disposition of his or her claim within 6 months after it was filed as a final denial. Each amendment to a pending claim shall be submitted in writing and signed by the claimant or the claimant’s duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the FAA has 6 months thereafter in which to make a final disposition of the claim as amended, and the claimant’s option under 28 U.S.C. 2675(a) does not accrue until 6 months after the filing of the amendment.


§ 15.3 Administrative claim, when presented; appropriate office.

(a) A claim is deemed to have been presented when the FAA receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to, or loss of, property or for personal injury or death, alleged to have occurred by reason of the incident. A claim which should have been presented to the FAA but which was mistakenly filed with another Federal agency, is deemed presented to the FAA on the date the claim is received by the FAA at a place designated in paragraph (b) of this section. A claim addressed to, or filed with, the FAA by mistake will be transferred to the appropriate Federal agency, if that agency can be determined, or returned to the claimant.

[b]
§ 15.7 Administrative claims; evidence and information to be submitted.

(a) Death. In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) The decedent’s employment or occupation at time of death, including monthly or yearly salary or earnings (if any), and the duration of last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent’s survivors, including identification of those survivors who were dependent for support upon the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent upon decedent for support at the time of death.

(5) Decedent’s general, physical, and mental conditions before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician’s detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent’s physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) Personal injury. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injuries, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

(2) In addition to the report required by paragraph (b)(1) of this section, the claimant may be required to submit to a physical or mental examination by a physician employed by the FAA or another Federal agency. A copy of the report of the examining physician is made available to the claimant upon the claimant’s written request if the claimant has, upon request, furnished the report required by paragraph (b)(1), and has made or agrees to make available to the FAA any other physician’s reports previously or thereafter made on the physical or mental condition which is the subject matter of the claim.

(3) Itemized bills for medical, dental, and hospital expenses incurred or itemized receipts of payment for such expenses.

(4) If the prognosis reveals the necessity for future treatment, a statement
§ 15.9 Investigation and examination.

The FAA may investigate a claim or conduct a physical examination of a claimant. The FAA may request any other Federal agency to investigate a claim or conduct a physical examination of a claimant and provide a report of the investigation or examination to the FAA.

Subpart B—Indemnification Under Section 1118 of the Federal Aviation Act of 1958

Source: Amdt. 15–2, 55 FR 18710, May 3, 1990, unless otherwise noted.
§ 15.111 Conduct of litigation.

(a) If a lawsuit is filed against the publisher and the publisher has sought, or intends to seek, indemnification under this part, the publisher shall—
   (1) Give notice as required by § 15.107 of this part;
   (2) If requested by the United States—
      (i) Implead the United States as a third-party defendant in the action; and
      (ii) Arrange for the removal of the action to Federal Court;
   (3) Promptly provide any additional information requested by the United States; and
   (4) Cooperate with the United States in the defense of the lawsuit.

(b) If the lawsuit filed against the publisher results in a proposed settlement, the publisher shall submit that proposed settlement to the FAA for approval in accordance with § 15.109 of this part.

(c) If the lawsuit filed against the publisher results in a judgment against the publisher and the publisher has sought, or intends to seek, indemnification under this part as a result of

§ 15.109 Settlements.

(a) A publisher may not settle a claim with another party, for which the publisher has sought, or intends to seek, indemnification under this part, unless—
   (1) The publisher submits a copy of the proposed settlement, and a statement justifying the settlement, to the Chief Counsel of the FAA; and
   (2) The Administrator and where necessary, the appropriate official of the Department of Justice, approves the proposed settlement.

(b) If the Administrator does not approve the proposed settlement, the Administrator will—
   (1) So notify the publisher by registered mail within 60 days of receipt of the proposed settlement; and
   (2) Explain why the request for indemnification was not approved.

(c) If the Administrator approves the proposed settlement, the Administrator will so notify the publisher by registered mail within 60 days after the FAA’s receipt of the proposed settlement.

(d) If the Administrator does not have sufficient information to approve or disapprove the proposed settlement, the Administrator will request, within 60 days after receipt of the proposed settlement, the additional information needed to make a determination.

§ 15.107 Notification requirements.

A request for indemnification will not be considered by the FAA unless the following conditions are met:

(a) The publisher must notify the Chief Counsel of the FAA, within the time limits prescribed in paragraph (b) or (c) of this section, of the publisher’s first receipt of a demand for payment, or service of a complaint in any proceeding, federal or state, in which it appears that indemnification under this part may be required.

(b) For each complaint filed, or demand for payment made, on or after December 19, 1985, and before June 4, 1990, the notice required by paragraph (a) of this section must be received by the FAA on or before July 2, 1990.

(c) For each complaint filed, or demand for payment made, on or after June 4, 1990, the notice required by paragraph (a) of this section must be received by the FAA within 60 days after the day the publisher first receives the demand for payment or service of the complaint.

(d) Within 5 days after the day a judgment is rendered against the publisher in any proceeding, or within 30 days of the denial of an appeal, whichever is later, the publisher must notify the FAA Chief Counsel that—
   (1) There is an adverse judgment against the publisher; and
   (2) The publisher has a claim for indemnification against the FAA arising out of that judgment.

§ 15.111 Conduct of litigation.

(a) If a lawsuit is filed against the publisher and the publisher has sought, or intends to seek, indemnification under this part, the publisher shall—
   (1) Give notice as required by § 15.107 of this part;
   (2) If requested by the United States—
      (i) Implead the United States as a third-party defendant in the action; and
      (ii) Arrange for the removal of the action to Federal Court;
   (3) Promptly provide any additional information requested by the United States; and
   (4) Cooperate with the United States in the defense of the lawsuit.

(b) If the lawsuit filed against the publisher results in a proposed settlement, the publisher shall submit that proposed settlement to the FAA for approval in accordance with § 15.109 of this part.

(c) If the lawsuit filed against the publisher results in a judgment against the publisher and the publisher has sought, or intends to seek, indemnification under this part as a result of

Federal Aviation Administration, DOT
§ 15.113 Indemnification agreements.

(a) Upon a finding of the Administrator that indemnification is required under this part, and after obtaining the concurrence of the United States Department of Justice, the FAA will promptly enter into an indemnification agreement providing for the payment of the costs specified in paragraph (c) of this section.

(b) The indemnification agreement will be signed by the Chief Counsel and the publisher.

(c) The FAA will indemnify the publisher for—

(1) Compensatory damages awarded by the court against the publisher;
(2) Reasonable costs and fees, including reasonable attorney fees at a rate not to exceed that permitted under the Equal Access to Justice Act (5 U.S.C. 504), and any postjudgment interest, if the publisher conducts a good faith defense, or pursues a good faith appeal, at the request, or with the concurrence, of the FAA.

(d) Except as otherwise provided in this section, the FAA will not indemnify the publisher for—

(1) Punitive or exemplary damages;
(2) Civil or criminal fines or any other litigation sanctions;
(3) Postjudgment interest;
(4) Costs;
(5) Attorney fees; or
(6) Other incidental expenses.

(e) The indemnification agreement must provide that the Government will be subrogated to all claims or rights of the publisher, including third-party 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

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Authority: 49 U.S.C. 106(g), 322, 1110, 1111, 1115, 1116, 1718 (a) and (b), 1719, 1723, 1726, 1727, 40103(e), 40113, 4502(b), 46101, 46104, 46110, 47104, 47106(e), 47107, 47108, 47111(d), 47122, 47123–47125, 47151–47153, 48103.

Source: Docket No. 27783, 61 FR 54004, October 16, 1996, unless otherwise noted.

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 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).


(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).

(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
§ 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, 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.

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

§ 16.11 Expedition and other modification of process.

(a) Under the authority of 49 U.S.C. 40113 and 47121, the Director may conduct investigations, issue orders, and take such other actions as are necessary to fulfill the purposes of this part, including the extension of any time period prescribed where necessary or appropriate for a fair and complete hearing of matters before the agency.

(b) Notwithstanding any other provision of this part, upon finding that circumstances require expedited handling of a particular case or controversy, the Director may issue an order directing any of the following prior to the issuance of the Director’s determination:

(1) Shortening the time period for any action under this part consistent with due process;

(2) If other adequate opportunity to respond to pleadings is available, eliminating the reply, rebuttal, or other actions prescribed by this part;

(3) Designating alternative methods of service; or

(4) Directing such other measures as may be required.

§ 16.13 Filing of documents.

Except as otherwise provided in this part, documents shall be filed with the FAA during a proceeding under this part as follows:

(a) Filing address. Documents to be filed with the FAA shall be filed with the Office of the Chief Counsel, Attention: FAA Part 16 Airport Proceedings Docket, AGC–610, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC, 20591. Documents to be filed with a hearing officer shall be filed at the address stated in the hearing order.

(b) Date and method of filing. Filing of any document shall be by personal delivery or mail as defined in this part, or by facsimile (when confirmed by filing on the same date by one of the foregoing methods). Unless the date is shown to be inaccurate, documents to be filed with the FAA shall be deemed
to be filed on the date of personal delivery, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, on the send date shown on the facsimile (provided filing has been confirmed through one of the foregoing methods), or on the mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) **Number of copies.** Unless otherwise specified, an executed original and three copies of each document shall be filed with the FAA Part 16 Airport Proceedings Docket. Copies need not be signed, but the name of the person signing the original shall be shown. If a hearing order has been issued in the case, one of the three copies shall be filed with the hearing officer. If filing by facsimile, the facsimile copy does not constitute one of the copies required under this section.

(d) **Form.** Documents filed with the FAA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include the docket number of the proceeding on the front page.

(e) **Signing of documents and other papers.** The original of every document filed shall be signed by the person filing it or the person’s duly authorized representative. The signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry and to the best of the signer’s knowledge, information, and belief, the document is—

1. Consistent with this part;
2. Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and
3. Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

(f) **Designation of person to receive service.** The initial document filed by any person shall state on the first page the name, post office address, telephone number, and facsimile number, if any, of the person(s) to be served with documents in the proceeding. If any of these items change during the proceeding, the person shall promptly file notice of

§ 16.15 Service of documents on the parties and the agency.

Except as otherwise provided in this part, documents shall be served as follows:

(a) **Who must be served.** Copies of all documents filed with the FAA Part 16 Airport Proceedings Docket shall be served by the persons filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the FAA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and facsimile numbers (if also served by facsimile) by [specify method of service]:

[list persons, addresses, facsimile numbers]

Dated this ___ day of __, 19__. [signature], for [party]

(b) **Method of service.** Except as otherwise agreed by the parties and the hearing officer, the method of service is the same as set forth in §16.13(b) for filing documents.

(c) **Where service shall be made.** Service shall be made to the persons identified in accordance with §16.13(f). If no such person has been designated, service shall be made on the party.

(d) **Presumption of service.** There shall be a presumption of lawful service—

1. When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under §16.13(f); or
2. When a properly addressed envelope, sent to the most current address submitted under §16.13(f), has been returned as undeliverable, unclaimed, or refused.

(e) **Date of service.** The date of service shall be determined in the same manner as the filing date under §16.13(b).
§ 16.17 Computation of time.

This section applies to any period of time prescribed or allowed by this part, by notice or order of the hearing officer, or by an applicable statute.

(a) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this part.

(b) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or legal holiday for the FAA, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(c) Whenever a party has the right or is required to do some act within a prescribed period after service of a document upon the party, and the document is served on the party by mail, 3 days shall be added to the prescribed period.

§ 16.19 Motions.

(a) General. An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Unless otherwise ordered by the agency, the filing of a motion will not stay the date that any action is permitted or required by this part.

(b) Form and contents. Unless made during a hearing, motions shall be made in writing, shall state with particularity the relief sought and the grounds for the relief sought, and shall be accompanied by affidavits or other evidence relied upon. Motions introduced during hearings may be made orally on the record, unless the hearing officer directs otherwise.

(c) Answers to motions. Except as otherwise provided in this part, or except when a motion is made during a hearing, any party may file an answer in support of or in opposition to a motion, accompanied by affidavits or other evidence relied upon, provided that the answer to the motion is filed within 10 days after the motion has been served upon the person answering, or any other period set by the hearing officer. Where a motion is made during a hearing, the answer and the ruling thereon may be made at the hearing, or orally or in writing within the time set by the hearing officer.

§ 16.21 Pre-complaint resolution.

(a) Prior to filing a complaint under this part, a person directly and substantially affected by the alleged noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties’ expense, mediation, arbitration, or the use of a dispute resolution board, or other form of third party assistance. The FAA Airports District Office, FAA Airports Field Office, or FAA Regional Airports Division responsible for administrating financial assistance to the respondent airport proprietor, will be available upon request to assist the parties with informal resolution.

(b) A complaint under this part will not be considered unless the person or authorized representative filing the complaint certifies that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint have been made and that there appears no reasonable prospect for timely resolution of the dispute. This certification shall include a brief description of the party’s efforts to obtain informal resolution but shall not include information on monetary or other settlement offers made but not agreed upon in writing by all parties.

§ 16.23 Complaints, answers, replies, rebuttals, and other documents.

(a) A person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator. A person doing business with an airport and paying fees or rentals to the airport shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b).

(b) Complaints filed under this part shall—

(1) State the name and address of each person who is the subject of the complaint and, with respect to each person, the specific provisions of each
§ 16.25 Dismissals.

Within 20 days after the receipt of the complaint, the Director will dismiss a complaint, or any claim made in a complaint, with prejudice if:

(a) It appears on its face to be outside the jurisdiction of the Administrator under the Acts listed in §16.1;

(b) On its face it does not state a claim that warrants an investigation or further action by the FAA; or

(c) The complainant lacks standing to file a complaint under §§16.3 and 16.23. The Director’s dismissal will include the reasons for the dismissal.

§ 16.27 Incomplete complaints.

If a complaint is not dismissed pursuant to §16.25 of this part, but is deficient as to one or more of the requirements set forth in §§16.21 or 16.23(b), the Director will dismiss the complaint within 20 days after receiving it. Dismissal will be without prejudice to the refiling of the complaint after amendment to correct the deficiency. The Director’s dismissal will include the reasons for the dismissal.

§ 16.29 Investigations.

(a) If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA investigates the subject matter of the complaint.

(b) The investigation may include one or more of the following, at the sole discretion of the FAA:

(1) A review of the written submissions or pleadings of the parties, as supplemented by any informal investigation the FAA considers necessary and by additional information furnished by the parties at FAA request. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided under this subpart. Each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.

(2) Obtaining additional oral and documentary evidence by use of the agency’s authority to compel production of
§ 16.105 Failure to resolve informally.

If the matters addressed in the FAA notices are not resolved informally, the
§ 16.109  FAA may issue a Director’s determination under §16.31.

Subpart E—Proposed Orders of Compliance

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

This section applies to initial determinations issued under §16.31 that provide the opportunity for a hearing.

(a) The agency will provide the opportunity for a hearing if, in the Director’s determination, the agency proposes to issue an order terminating eligibility for grants pursuant to 49 U.S.C. 47106(e) and 47111(d), an order suspending the payment of grant funds, an order withholding approval of any new application to impose a passenger facility charge pursuant to section 112 of the Federal Aviation Administration Act of 1994, 49 U.S.C. 47111(e), a cease and desist order, an order directing the refund of fees unlawfully collected, or any other compliance order issued by the Administrator to carry out the provisions of the Acts, and required to be issued after notice and opportunity for a hearing. In cases in which a hearing is not required by statute, the FAA may provide opportunity for a hearing at its discretion.

(b) In a case in which the agency provides the opportunity for a hearing, the Director’s determination issued under §16.31 will include a statement of the availability of a hearing under subpart F of this part.

(c) Within 20 days after service of a Director’s determination under §16.31 and paragraph (b) of this section, a person subject to the proposed compliance order may—

(1) Request a hearing under subpart F of this part;

(2) Waive hearing and appeal the Director’s determination in writing to the Associate Administrator, as provided in §16.33;

(3) File, jointly with a complainant, a motion to withdraw the complaint and to dismiss the proposed compliance action; or

(4) Submit, jointly with the agency attorney, a proposed consent order under §16.243(e).

(d) If the respondent fails to request a hearing or to file an appeal in writing within the time periods provided in paragraph (c) of this section, the Director’s determination becomes final.

Subpart F—Hearings

§ 16.201  Notice and order of hearing.

(a) If a respondent is provided the opportunity for hearing in an initial determination and does not waive hearing, the Deputy Chief Counsel within 10 days after the respondent elects a hearing will issue and serve on the respondent and complainant a hearing order. The hearing order will set forth:

(1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this part;

(5) The name and address of the person designated as hearing officer, and the assignment of authority to the hearing officer to conduct the hearing in accordance with the procedures set forth in this part; and

(6) The date by which the hearing officer is directed to issue an initial decision.

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the hearing officer to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.


In accordance with the rules of this subpart, a hearing officer may:

(a) Give notice of, and hold, prehearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(d) Limit the frequency and extent of discovery;

(e) Rule on offers of proof;
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(f) Receive relevant and material evidence;

(g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(h) Hold conferences to settle or to simplify the issues by consent of the parties;

(i) Dispose of procedural motions and requests;

(j) Examine witnesses; and

(k) Make findings of fact and conclusions of law, and issue an initial decision.

§ 16.203 Appearances, parties, and rights of parties.

(a) Appearances. Any party may appear and be heard in person.

(1) Any party may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative.

(2) An attorney, or other duly authorized representative, who represents a party shall file a notice of appearance in accordance with § 16.13.

(b) Parties and agency participation. (1) The parties to the hearing are the respondent(s) named in the hearing order, the complainant(s), and the agency.

(2) Unless otherwise specified in the hearing order, the agency attorney will serve as prosecutor for the agency from the date of issuance of the Director's determination providing an opportunity for hearing.

§ 16.207 Intervention and other participation.

(a) A person may submit a motion for leave to intervene as a party. Except for good cause shown, a motion for leave to intervene shall be submitted not later than 10 days after the notice of hearing and hearing order.

(b) If the hearing officer finds that intervention will not unduly broaden the issues or delay the proceedings and, if the person has a property or financial interest that may not be addressed adequately by the parties, the hearing officer may grant a motion for leave to intervene. The hearing officer may determine the extent to which an intervenor may participate in the proceedings.

(c) Other persons may petition the hearing officer for leave to participate in the hearing. Participation is limited to the filing of post-hearing briefs and reply to the hearing officer and the Associate Administrator. Such briefs shall be filed and served on all parties in the same manner as the parties' post hearing briefs are filed.

(d) Participation under this section is at the discretion of the FAA, and no decision permitting participation shall be deemed to constitute an expression by the FAA that the participant has such a substantial interest in the proceeding as would entitle it to judicial review of such decision.

§ 16.209 Extension of time.

(a) Extension by oral agreement. The parties may agree to extend for a reasonable period of time for filing a document under this part. If the parties agree, the hearing officer shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the hearing officer to be signed by the hearing officer and filed with the hearing docket. The hearing officer may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) Extension by motion. A party shall file a written motion for an extension of time with the hearing officer not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party.

(c) Failure to rule. If the hearing officer fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed denied.

(d) Effect on time limits. In a hearing required by section 519(b) of the Airport and Airways Improvement Act, as amended in 1987, 49 U.S.C. 47106(e) and 47111(d), the due date for the hearing officer's initial decision and for the
final agency decision are extended by the length of the extension granted by the hearing officer only if the hearing officer grants an extension of time as a result of an agreement by the parties as specified in paragraph (a) of this section or, if the hearing officer grants an extension of time as a result of the sponsor’s failure to adhere to the hearing schedule. In any other hearing, an extension of time granted by the hearing officer for any reason extends the due date for the hearing officer’s initial decision and for the final agency decision by the length of time of the hearing officer’s decision.

§ 16.211 Prehearing conference.

(a) Prehearing conference notice. The hearing officer schedules a prehearing conference and serves a prehearing conference notice on the parties promptly after being designated as a hearing officer.

(1) The prehearing conference notice specifies the date, time, place, and manner (in person or by telephone) of the prehearing conference.

(2) The prehearing conference notice may direct the parties to exchange proposed witness lists, requests for evidence and the production of documents in the possession of another party, responses to interrogatories, admissions, proposed procedural schedules, and proposed stipulations before the date of the prehearing conference.

(b) The prehearing conference. The prehearing conference is conducted by telephone or in person, at the hearing officer’s discretion. The prehearing conference addresses matters raised in the prehearing conference notice and such other matters as the hearing officer determines will assist in a prompt, full and fair hearing of the issues.

(c) Prehearing conference report. At the close of the prehearing conference, the hearing officer rules on any requests for evidence and the production of documents in the possession of other parties, responses to interrogatories, and admissions; on any requests for depositions; on any proposed stipulations; and on any pending applications for subpoenas as permitted by §16.219. In addition, the hearing officer establishes the schedule, which shall provide for the issuance of an initial decision not later than 110 days after issuance of the Director’s determination order unless otherwise provided in the hearing order.

§ 16.213 Discovery.

(a) Discovery is limited to requests for admissions, requests for production of documents, interrogatories, and depositions as authorized by §16.215. (b) The hearing officer shall 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 may 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.

§ 16.215 Depositions.

(a) General. For good cause shown, the hearing officer may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Generally, an order to take the deposition of a witness is entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing;

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) Application for deposition. Any party desiring to take the deposition of a witness shall make application therefor to the hearing officer in writing, with a copy of the application served on each party. The application shall include:

(1) The name and residence of the witness;

(2) The time and place for the taking of the proposed deposition;
(3) The reasons why such deposition should be taken; and
(4) A general description of the matters concerning which the witness will be asked to testify.

(c) Order authorizing deposition. If good cause is shown, the hearing officer, in his or her discretion, issues an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition and the general scope and subject matter of the testimony to be taken.

(d) Procedures for deposition. (1) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim.
(2) Objections to questions or evidence shall be recorded in the transcript of the deposition. The interposing of an objection shall not relieve the witness of the obligation to answer questions, except where the answer would violate a privilege.
(3) The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

§ 16.217 Witnesses.

(a) Each party may designate as a witness any person who is able and willing to give testimony that is relevant and material to the issues in the hearing case, subject to the limitations set forth in paragraph (b) of this section.
(b) The hearing officer may exclude testimony of witnesses that would be irrelevant, immaterial, or unduly repetitious.
(c) Any witness may be accompanied by counsel. Counsel representing a nonparty witness has no right to examine the witness or otherwise participate in the development of testimony.

§ 16.219 Subpoenas.

(a) Request for subpoena. A party may apply to the hearing officer, within the time specified for such applications in the prehearing conference report, for a subpoena to compel testimony at a hearing or to require the production of documents only from the following persons:
(1) Another party;
(2) An officer, employee, or agent of another party;
(3) Any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act;
(4) An officer, employee, or agent of any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act.
(b) Issuance and service of subpoena.
(1) The hearing officer issues the subpoena if the hearing officer determines that the evidence to be obtained by the subpoena is relevant and material to the resolution of the issues in the case.
(2) Subpoenas shall be served by personal service, or upon an agent designated in writing for the purpose, or by certified mail, return receipt 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.
(3) A subpoena issued under this part is effective throughout the United States or any territory or possession thereof.

(c) Motions to quash or modify subpoena. (1) A party or any person upon whom a subpoena has been served may file a motion to quash or modify the subpoena with the hearing officer at or before the time specified in the subpoena for the filing of such motions. The applicant shall describe in detail the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive.
(2) A motion to quash or modify the subpoena stays the effect of the subpoena pending a decision by the hearing officer on the motion.
§ 16.221 Witness fees.

(a) The party on whose behalf a witness appears is responsible for paying any witness fees and mileage expenses.

(b) Except for employees of the United States summoned to testify as to matters related to their public employment, witnesses summoned by subpoena shall be paid the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 16.223 Evidence.

(a) General. A party may submit direct and rebuttal evidence in accordance with this section.

(b) Requirement for written testimony and evidence. Except in the case of evidence obtained by subpoena, or in the case of a special ruling by the hearing officer to admit oral testimony, a party’s direct and rebuttal evidence shall be submitted in written form in advance of the oral hearing pursuant to the schedule established in the hearing officer’s prehearing conference report. Written direct and rebuttal fact testimony shall be certified by the witness as true and correct. Subject to the same exception (for evidence obtained by subpoena or subject to a special ruling by the hearing officer), oral examination of a party’s own witness is limited to certification of the accuracy of written evidence, including correction and updating, if necessary, and reexamination following cross-examination by other parties.

(c) Subpoenad testimony. Testimony of witnesses appearing under subpoena may be obtained orally.

(d) Cross-examination. A party may conduct cross-examination that may be required for disclosure of the facts, subject to control by the hearing officer for fairness, expedition and exclusion of extraneous matters.

(e) Hearsay evidence. Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay goes to the weight of evidence and does not affect its admissibility.

(f) Admission of evidence. The hearing officer admits evidence introduced by a party in support of its case in accordance with this section, but may exclude irrelevant, immaterial, or unduly repetitious evidence.

(g) Expert or opinion witnesses. An employee of the FAA or DOT may not be called as an expert or opinion witness for any party other than the agency except as provided in Department of Transportation regulations at 49 CFR part 9.

§ 16.225 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The hearing officer may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the hearing officer. The person shall state specific grounds for nondisclosure in the motion.

(c) The hearing officer shall grant the motion to withhold information from public disclosure if the hearing officer determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

§ 16.227 Standard of proof.

The hearing officer shall issue an initial decision or shall rule in a party’s favor only if the decision or ruling is supported by, and in accordance with, reliable, probative, and substantial evidence contained in the record and is in accordance with law.

§ 16.229 Burden of proof.

(a) The burden of proof of noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act 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.
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§ 16.231 Offer of proof.

A party whose evidence has been excluded by a ruling of the hearing officer may offer the evidence on the record when filing an appeal.

§ 16.233 Record.

(a) Exclusive record. The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) Examination and copy of record. Any interested person may examine the record at the Part 16 Airport Proceedings Docket, AGC–600, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Any person may have a copy of the record after payment of reasonable costs for search and reproduction of the record.

§ 16.235 Argument before the hearing officer.

(a) Argument during the hearing. During the hearing, the hearing officer shall give the parties reasonable opportunity to present oral argument on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The hearing officer may direct written argument during the hearing if the hearing officer finds that submission of written arguments would not delay the hearing.

(b) Posthearing briefs. The hearing officer may request or permit the parties to submit posthearing briefs. The hearing officer may provide for the filing of simultaneous reply briefs as well. If such filing will not unduly delay the issuance of the hearing officer’s initial decision. Posthearing briefs shall include proposed findings of fact and conclusions of law; exceptions to rulings of the hearing officer; references to the record in support of the findings of fact; and supporting arguments for the proposed findings, proposed conclusions, and exceptions.

§ 16.237 Waiver of procedures.

(a) The hearing officer shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the hearing officer to enter an initial decision on the record.

Subpart G—Initial Decisions, Orders and Appeals

§ 16.241 Initial decisions, order, and appeals.

(a) The hearing officer shall issue an initial decision based on the record developed during the proceeding and shall send the initial decision to the parties not later than 110 days after the Director’s determination unless otherwise provided in the hearing order.

(b) Each party adversely affected by the hearing officer’s initial decision may file an appeal with the Associate Administrator within 15 days of the date the initial decision is issued. Each party may file a reply to an appeal within 10 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery.

(c) If an appeal is filed, the Associate Administrator reviews the entire record and issues a final agency decision and order within 30 days of the due date of the reply. If no appeal is filed, the Associate Administrator may take review of the case on his or her own motion. If the Associate Administrator finds that the respondent is not in compliance with any Act or any regulation, agreement, or document of conveyance issued or made under such Act, the final agency order includes a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

(d) If no appeal is filed, and the Associate Administrator does not take review of the initial decision on the Associate Administrator’s own motion, the initial decision shall take effect as the final agency decision and order on the sixteenth day after the actual date the initial decision is issued.
§ 16.243 Consent orders.

(a) The agency attorney and the respondents may agree at any time before the issuance of a final decision and order to dispose of the case by issuance of a consent order. Good faith efforts to resolve a complaint through issuance of a consent order may continue throughout the administrative process. Except as provided in §16.209, such efforts may not serve as the basis for extensions of the times set forth in this part.

(b) A proposal for a consent order, specified in paragraph (a) of this section, shall include:
   (1) A proposed consent order;
   (2) An admission of all jurisdictional facts;
   (3) An express waiver of the right to further procedural steps and of all rights of judicial review; and
   (4) The hearing order, if issued, and an acknowledgment that the hearing order may be used to construe the terms of the consent order.

(c) If the issuance of a consent order has been agreed upon by all parties to the hearing, the proposed consent order shall be filed with the hearing officer, along with a draft order adopting the consent decree and dismissing the case, for the hearing officer’s adoption.

(d) The deadline for the hearing officer’s initial decision and the final agency decision is extended by the amount of days elapsed between the filing of the proposed consent order with the hearing officer and the issuance of the hearing officer’s order continuing the hearing.

(e) If the agency attorney and sponsor agree to dispose of a case by issuance of a consent order before the FAA issues a hearing order, the proposal for a consent order is submitted jointly to the official authorized to issue the hearing order, together with a request to adopt the consent order and dismiss the case. The official authorized to issue the hearing order issues the consent order as an order of the FAA and terminates the proceeding.

Subpart H—Judicial Review

§ 16.247 Judicial review of a final decision and order.

(a) A person may seek judicial review, in a United States Court of Appeals, of a final decision and order of the Associate Administrator as provided in 49 U.S.C. 46118 or section 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended, (AAIA), 49 U.S.C. 47106(d) and 47111(d).

A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order under the AAIA has been served on the party or within 60 days after the entry of an order under 49 U.S.C. 40101 et seq.

(b) The following do not constitute final decisions and orders subject to judicial review:

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(1) An FAA decision to dismiss a complaint without prejudice, as set forth in §16.27;
(2) A Director’s determination;
(3) An initial decision issued by a hearing officer at the conclusion of a hearing;
(4) A Director’s determination or an initial decision of a hearing officer that becomes the final decision of the Associate Administrator because it was not appealed within the applicable time periods provided under §§16.33(b) and 16.241(b).

Subpart I—Ex Parte Communications

§ 16.301 Definitions.
As used in this subpart:
Decisional employee means the Administrator, Deputy Administrator, Associate Administrator, Director, hearing officer, or other FAA employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding.
Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this part, or communications between FAA employees who participate as parties to a hearing pursuant to 16.203(b) of this part and other parties to a hearing.

§ 16.303 Prohibited ex parte communications.
(a) The prohibitions of this section shall apply from the time a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of the acquisition of such knowledge.
(b) Except to the extent required for the disposition of ex parte matters as authorized by law:
(1) No interested person outside the FAA and no FAA employee participating as a party shall make or knowingly cause to be made to any decisional employee an ex parte communication relevant to the merits of the proceeding;
(2) No FAA employee shall make or knowingly cause to be made to any interested person outside the FAA an ex parte communication relevant to the merits of the proceeding; or
(3) Ex parte communications regarding solely matters of agency procedure or practice are not prohibited by this section.

§ 16.305 Procedures for handling ex parte communications.
A decisional employee who receives or who makes or knowingly causes to be made a communication prohibited by §16.303 shall place in the public record of the proceeding:
(a) All such written communications;
(b) Memoranda stating the substance of all such oral communications; and
(c) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (a) and (b) of this section.

§ 16.307 Requirement to show cause and imposition of sanction.
(a) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of §16.303, the Associate Administrator or his designee or the hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.
(b) The Associate Administrator may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the FAA, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

PART 17—PROCEDURES FOR PROTESTS AND CONTRACTS DISPUTES

Subpart A—General

Sec. 17.1 Applicability.
§ 17.1 Applicability.

This part applies to all protests or contract disputes against the FAA that are brought on or after June 28, 1999, with the exception of those contract disputes arising under or related to FAA contracts entered into prior to April 1, 1996.

§ 17.3 Definitions.

17.3 Definition of authority.
17.7 Filing and computation of time.
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APPENDIX A TO PART 17—ALTERNATIVE DISPUTE RESOLUTION (ADR)


Subpart A—General

§ 17.1 Applicability.

This part applies to all protests or contract disputes against the FAA that are brought on or after June 28, 1999, with the exception of those contract disputes arising under or related to FAA contracts entered into prior to April 1, 1996.

§ 17.3 Definitions.

(a) Accrual mean to come into existence as a legally enforceable claim.
(b) Accrual of a contract claim means that all events relating to a claim have occurred which fix liability of either the government or the contractor and permit assertion of the claim, regardless of when the claimant actually discovered those events. For liability to be fixed, some injury must have occurred. Monetary damages need not have been incurred, but if the claim is for money, such damages must be capable of reasonable estimation. The accrual of a claim or the running of the limitations period may be tolled on such equitable grounds as where the office of Dispute Resolution for Acquisition determines that there has been active concealment or fraud or where it finds that the facts were inherently unknowable.
(c) Acquisition Management System (AMS) establishes the policies, guiding principles, and internal procedures for the FAA’s acquisition system.
(d) Administrator means the Administrator of the Federal Aviation Administration.
(e) Alternative Dispute Resolution (ADR) is the primary means of dispute resolution that would be employed by the FAA’s Office of Dispute Resolution for Acquisition. See Appendix A of this part.
(f) Compensated Neutral refers to an impartial third party chosen by the parties to act as a facilitator, mediator, or arbitrator functioning to resolve the protest or contract dispute under the auspices of the Office of Dispute Resolution for Acquisition. The parties pay equally for the services of a Compensated Neutral, unless otherwise agreed to by the parties. A Dispute Resolution Officer (DRO) or Neutral cannot be a Compensated Neutral.
(g) Contract dispute, as used in this part, means a written request to the Office of Dispute Resolution for Acquisition seeking resolution, under an existing FAA contract subject to the AMS, of a claim for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to or involving an alleged
breach of that contract. A contract dispute does not require, as a prerequisite, the issuance of a Contracting Officer final decision. Contract disputes for purposes of ADR only may also involve contracts not subject to the AMS.

(h) Default Adjudicative Process is an adjudicative process used to resolve protests or contract disputes where the parties cannot achieve resolution through informal communication or the use of ADR. The Default Adjudicative Process is conducted by a DRO or Special Master selected by the Office of Dispute Resolution for Acquisition to serve as “adjudicative officers,” as that term is used in part 14 of this chapter.

(i) Discovery is the procedure where opposing parties in a protest or contract dispute may, either voluntarily or to the extent directed by the Office of Dispute Resolution for Acquisition, obtain testimony from, or documents and information held by, other parties or non-parties.

(j) Dispute Resolution Officer (DRO) is a licensed attorney reporting to the Office of Dispute Resolution for Acquisition. The term DRO can include the Director of the Office of Dispute Resolution for Acquisition, Office of Dispute Resolution for Acquisition staff attorneys or other FAA attorneys assigned to the Office of Dispute Resolution for Acquisition.

(k) An interested party, in the context of a bid protest, is one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract. Proposed subcontractors are not “interested parties” within this definition and are not eligible to submit protests to the Office of Dispute Resolution for Acquisition.

(l) An intervenor is an interested party other than the protester whose participation in a protest is allowed by the Office of Dispute Resolution for Acquisition. For a post-award protest, the awardee of the contract that is the subject of the protest shall be allowed, upon request, to participate as an intervenor in the protest. In such a protest, no other interested parties shall be allowed to participate as intervenors.

(m) Neutral refers to an impartial third party in the ADR process chosen by the Office of Dispute Resolution for Acquisition to act as a facilitator, mediator, arbitrator, or otherwise to resolve a protest or contract dispute. A Neutral can be a DRO or a person not an employee of the FAA who serves on behalf of the Office of Dispute Resolution for Acquisition.

(n) The Office of Dispute Resolution for Acquisition (ODRA), under the direction of the Director, acts on behalf of the Administrator to manage the FAA Dispute Resolution Process, and to recommend action to be the Administrator on matters concerning protests or contract disputes.

(o) Parties include the protester(s) or (in the case of a contract dispute) the contractor, the FAA, and any intervenor(s).

(p) Product Team, as used in these rules, refers to the FAA organization(s) responsible for the procurement activity, without regard to funding source, and includes the Contracting Officer (CO) and assigned FAA legal counsel, when the FAA organization(s) represent(s) the FAA as a party to a protest or contract dispute before the Office of Dispute Resolution for Acquisition. The CO is responsible for all Product Team communications with and submissions to the Office of Dispute Resolution for Acquisition through assigned FAA counsel.

(q) Screening Information Request (SIR) means a request by the FAA for documentation, information, presentations, proposals, or binding offers concerning an approach to meeting potential acquisition requirements established by the FAA. The purpose of a SIR is for the FAA to obtain information needed for it to proceed with a source selection decision and contract award.

(r) A Special Master is an attorney, usually with extensive adjudicative experience, who has been assigned by the Office of Dispute Resolution for Acquisition to act as its finder of fact, and to make findings and recommendations based upon AMS policy and applicable law and authorities in the Default Adjudicative Process.
§ 17.7 Filing and computation of time.

(a) Filing of a protest or contract dispute may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A protest or contract dispute is considered to be filed on the date it is received by the Office of Dispute Resolution for Acquisition during normal business hours. The Office of Dispute Resolution for Acquisition’s normal business hours are from 8:30 a.m. to 5 p.m. est or edt, whichever is in use. A protest or contract dispute received via mail, after the time period prescribed for filing, shall not be considered timely filed even though it may be postmarked within the time period prescribed for filing.

(b) Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a contract dispute may be accomplished by any means available in paragraph (a) of this section. Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a protest may only be accomplished by overnight delivery, hand delivery or facsimile.

(c) The time limits stated in this part are calculated in business days, which exclude weekends and Federal holidays. In computing time, the day of the event beginning a period of time shall not be included. If the last day of a period falls on a weekend or a Federal holiday, the first business day following the weekend or holiday shall be considered the last day of the period.

§ 17.9 Protective orders.

(a) The Office of Dispute Resolution for Acquisition may issue protective orders addressing the treatment of protected information, either at the request of a party or upon its own initiative. Such information may include proprietary, confidential, or source-selection-sensitive material, or other information the release of which could result in a competitive advantage to one or more firms.

(b) The terms of the Office of Dispute Resolution for Acquisition’s standard protective order may be altered to suit particular circumstances, by negotiation of the parties, subject to the approval of the Office of Dispute Resolution for Acquisition. The protective order establishes procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for access to the material under the order by submitting an application to the Office of Dispute Resolution for Acquisition, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decisionmaking for any firm that could gain a competitive advantage from access to the protected information and that the applicant will diligently protect any protected information received from inadvertent disclosure. Objections to an applicant’s admission shall be raised within two (2) days of the application, although the Office of Dispute Resolution for Acquisition may consider objections raised after that time for good cause.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions or the taking of the actions as the Office of Dispute Resolution for Acquisition deems appropriate.

(e) The parties are permitted to agree upon what material is to be covered by a protective order, subject to approval by the Office of Dispute Resolution for Acquisition.

Subpart B—Protests

§ 17.11 Matters not subject to protest.

The following matters may not be protested before the Office of Dispute Resolution for Acquisition:
(a) FAA purchases from or through, state, local, and tribal governments and public authorities;
(b) FAA purchases from or through other federal agencies;
(c) Grants;
(d) Cooperative agreements;
(e) Other transactions which do not fall into the category of procurement contracts subject to the AMS.

§ 17.13 Dispute resolution process for protests.

(a) Protests concerning FAA SIRs or contract awards shall be resolved pursuant to this part.
(b) The offeror initially should attempt to resolve any issues concerning potential protests with the CO. The CO, in coordination with FAA legal counsel, will make reasonable efforts to answer questions promptly and completely, and, where possible, to resolve concerns or controversies.
(c) Offerors or prospective offerors shall file a protest with the Office of Dispute Resolution for Acquisition in accordance with § 17.15. The protest time limitations set forth in § 17.15 will not be extended by attempts to resolve a potential protest with the CO. Other than the time limitations specified in § 17.15 for the filing of protests, the Office of Dispute Resolution for Acquisition retains the discretion to modify any time constraints imposed in connection with protests.
(d) In accordance with § 17.17, the Office of Dispute Resolution for Acquisition shall convene a status conference for the protest. Under the procedures set forth in that section, the parties generally will either decide to utilize Alternative Dispute Resolution (ADR) techniques to resolve the protest, pursuant to subpart D of this part, or they will proceed under the Default Adjudicative Process set forth in subpart E of this part. However, as provided in § 17.31(c), informal ADR techniques may be utilized simultaneously with ongoing adjudication.
(e) The Office of Dispute Resolution for Acquisition Director shall designate Dispute Resolution Officers (DROs) or Special Masters for protests.
(f) Multiple protests concerning the same SIR, solicitation, or contract award may be consolidated at the discretion of the Office of Dispute Resolution for Acquisition, and assigned to a single DRO or Special Master for adjudication.
(g) Procurement activities, and, where applicable, contractor performance pending resolution of a protest shall continue during the pendency of a protest, unless there is a compelling reason to suspend or delay all or part of the procurement activities. Pursuant to §§ 17.15(d) and 17.17(b), the Office of Dispute Resolution for Acquisition may recommend suspension of award or delay of contract performance, in whole or in part, for a compelling reason. A decision to suspend or delay procurement activities or contractor performance would be made in writing by the FAA Administrator or the Administrator’s delegatee.

§ 17.15 Filing a protest.

(a) Only an interested party may file a protest, and shall initiate a protest by filing a written protest with the Office of Dispute Resolution for Acquisition within the times set forth below, or the protest shall be dismissed as untimely:
(1) Protests based upon alleged improprieties in a solicitation or a SIR that are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for the receipt of initial proposals.
(2) In procurements where proposals are requested, alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation;
(3) For protests other than those related to alleged solicitation improprieties, the protest must be filed on the later of the following two dates:
   (i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or
   (ii) If the protester has requested a post-award debriefing from the FAA Product Team, not later than five (5) business days after the date on which the Product Team holds that debriefing.
§ 17.17 Initial protest procedures.

(b) Protest shall be filed at:
(1) Office of Dispute Resolution for Acquisition, Federal Aviation Administration, AGC–70, 3rd Floor, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3290, facsimile: (202) 267–3720; or
(2) Other address as shall be published from time to time in the Federal Register.

(c) A Protest shall be in writing, and set forth:
(1) The protester's name, address, telephone number, and facsimile (FAX) number;
(2) The name, address, telephone number, and FAX number of a person designated by the protester (Protester Designee), and who shall be duly authorized to represent the protester, to be the point of contact;
(3) The SIR number or, if available, the contract number and the name of the CO;
(4) The basis for the protester's status as an interested party;
(5) The facts supporting the timeliness of the protest;
(6) Whether the protester requests a protective order, the material to be protected, and attach a redacted copy of that material;
(7) A detailed statement of both the legal and factual grounds of the protest, and attach one (1) copy of each relevant document;
(8) The remedy or remedies sought by the protester, as set forth in § 17.21;
(9) The signature of the Protester Designee, or another person duly authorized to represent the protester.

(d) If the protester wishes to request a suspension or delay of procurement, in whole or in part, and believes there are compelling reasons that, if known to the FAA, would cause the FAA to suspend or delay the procurement because of the protested action, the protester shall:
(1) Set forth each such compelling reason, supply all facts supporting the protester's position, identify each person with knowledge of the facts supporting each compelling reason, and identify all documents that support each compelling reason.
(2) Clearly identify any adverse consequences to the protester, the FAA, or any interested party, should the FAA not suspend or delay the procurement.

(e) At the same time as filing the protest with the Office of Dispute Resolution for Acquisition, the protester shall serve a copy of the protest on the CO and any other official designated in the SIR for receipt of protests by means reasonably calculated to be received by the CO on the same day as it is to be received by the Office of Dispute Resolution for Acquisition. The protest shall include a signed statement from the protester, certifying to the Office of Dispute Resolution for Acquisition the manner of service, date, and time when a copy of the protest was served on the CO and other designated official(s).

(f) Upon receipt of the protest, the CO shall inform the Office of Dispute Resolution for Acquisition of the names, addresses, and telephone and facsimile numbers of the awardee and/or other interested parties, if known, and shall, in such notice, designate a person as the point of contact for the Office of Dispute Resolution for Acquisition by facsimile. The CO shall also notify the awardee and/or interested parties in writing of the existence of the protest the same day as the CO provides the foregoing information to the Office of Dispute Resolution for Acquisition. The awardee and/or interested parties shall notify the ODRA in writing, of their interest in participating in the protest as intervenors within two (2) business days of receipt of the CO's notification, and shall, in such notice, designate a person as the point of contact for the ODRA. Such notice may be submitted to the ODRA by facsimile.

(g) The Office of Dispute Resolution for Acquisition has discretion to designate the parties who shall participate in the protest as intervenors. For awarded contracts, only the awardee may participate as an intervenor.

to the Office of Dispute Resolution for Acquisition within two (2) business days of receipt of the protest. Copies of the response shall be furnished to the protester and any intervenor(s) so as to be received within the same two (2) business days. The protester and any intervenor(s) shall have the opportunity of providing additional comments on the response within an additional period of two (2) business days. Based on its review of such submissions, the Office of Dispute Resolution for Acquisition, in its discretion, may recommend such suspension or delay to the Administrator or the Administrator’s designee.

(b) Within five (5) business days of the filing of a protest, or as soon thereafter as practicable, the Office of Dispute Resolution for Acquisition shall convene a status conference to—

(1) Review procedures;
(2) Identify and develop issues related to summary dismissal and suspension recommendations;
(3) Handle issues related to protected information and the issuance of any needed protective order;
(4) Encourage the parties to use ADR;
(5) Conduct or arrange for early neutral evaluation of the protest by a DRO or Neutral or Compensated Neutral, at the discretion of the Office of Dispute Resolution for Acquisition and/or based upon the agreement or request of any party(ies) seeking such evaluation; and
(6) For any other reason deemed appropriate by the DRO or by the Office of Dispute Resolution for Acquisition.

(c) On the fifth business day following the status conference, the Product Team and protester will file with the Office of Dispute Resolution for Acquisition—

(1) A joint statement that they have decided to pursue ADR proceedings in lieu of adjudication in order to resolve the protest; or
(2) Joint or separate written explanations as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed.

(d) Should the Product Team and protester elect to utilize ADR proceedings to resolve the protest, they will agree upon the neutral to conduct the ADR proceedings (either an Office of Dispute Resolution for Acquisition-designated Neutral or a Compensated Neutral of their own choosing) pursuant to §17.33(c), and shall execute and file with the Office of Dispute Resolution for Acquisition a written ADR agreement within five (5) business days after the status conference. Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.

(e) Should the Product Team or protester indicate at the status conference that ADR proceedings will not be used, then within ten (10) business days following the status conference, the Product Team will file with the Office of Dispute Resolution for Acquisition a Product Team Response to the protest. The Office of Dispute Resolution for Acquisition may alter the schedule for filing of the Product Team Response to accommodate the requirements of a particular protest.

(f) The Product Team Response shall consist of a written chronological statement of pertinent facts, and a written presentation of applicable legal or other defenses. The Product Team Response shall cite to and be accompanied by all relevant documents, which shall be chronologically indexed and tabbed. A copy of the response shall be furnished so as to be received by the protester and any intervenor(s) on the same date it is filed with the Office of Dispute Resolution for Acquisition, if practicable, but in any event no later than one (1) business day after the date if it is filed with the Office of Dispute Resolution for Acquisition. In all cases, the Product Team shall indicate the method of service used.

(g) Should the parties pursue ADR proceedings under subpart D of this part and fail to achieve a complete resolution of the protest via ADR, the Office of Dispute Resolution for Acquisition, upon notification of that fact by any of the parties, shall designate a DRO or Special Master for purposes of adjudication under subpart E of this part, and the DRO or Special Master shall convene a status conference, wherein he/she shall establish a schedule for the filing of the Product Team Response and further submissions.
§ 17.19 Dismissal or summary decision of protests.

(a) At any time during the protest, any party may request, by motion to the Office of Dispute Resolution for Acquisition, that—

(1) The protest, or any count or portion of a protest, be dismissed for lack of jurisdiction, if the protester fails to establish that the protest is timely, or that the protester has no standing to pursue the protest;

(2) The protest, or any count or portion of a protest, be dismissed, if frivolous or without basis in fact or law, or for failure to state a claim upon which relief may be had;

(3) A summary decision be issued with respect to the protest, or any count or portion of a protest, if:

(i) The undisputed material facts demonstrate a rational basis for the Product Team action or inaction in question, and there are no other material facts in dispute that would overcome a finding of such a rational basis; or

(ii) The undisputed material facts demonstrate, that no rational basis exists for the Product Team action or inaction in question, and there are no material facts in dispute that would overcome a finding of the lack of such a rational basis.

(b) In connection with any request for dismissal or summary decision, the Office of Dispute Resolution for Acquisition shall consider any material facts in dispute, in a light most favorable to the party against whom the request is made.

(c) Either upon motion by a party or on its own initiative, the Office of Dispute Resolution for Acquisition may, at any time, exercise its discretion to:

(1) Recommend to the Administrator dismissal or the issuance of a summary decision with respect to the entire protest;

(2) Dismiss the entire protest or issue a summary decision with respect to the entire protest, if delegated that authority by the Administrator; or

(3) Dismiss or issue a summary decision with respect to any count or portion of a protest.

(d) A dismissal or summary decision regarding the entire protest by either the Administrator, or the Office of Dispute Resolution for Acquisition by delegation, shall be construed as a final agency order. A dismissal or summary decision that does not resolve all counts or portions of a protest shall not constitute a final agency order, unless and until such dismissal or decision is incorporated or otherwise adopted in a decision by the Administrator (or the Office of Dispute Resolution for Acquisition, by delegation) regarding the entire protest.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the Office of Dispute Resolution for Acquisition shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to the proposed dismissal or summary decision.

§ 17.21 Protest remedies.

(a) The Office of Dispute Resolution for Acquisition has broad discretion to recommend remedies for a successful protest that are consistent with the AMS and applicable statutes. Such remedies may include, but are not limited to one or more, or a combination of the following—

(1) Amend the SIR;

(2) Refrain from exercising options under the contract;

(3) Issue a new SIR;

(4) Require recompetition;

(5) Terminate an existing contract for the FAA’s convenience;

(6) Direct an award to the protester;

(7) Award bid and proposal costs; or

(8) Any combination of the above remedies, or any other action consistent with the AMS that is appropriate under the circumstances.

(b) In determining the appropriate recommendation, the Office of Dispute Resolution for Acquisition should consider the circumstances surrounding
the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the cost of any proposed remedy to the FAA: the urgency of the procurement; and the impact of the recommendation on the FAA.

(c) Attorney’s fees of a prevailing protestor are allowable to the extent permitted by the Equal Access to Justice Act, 5 U.S.C. 504(a)(1)(EAJA).

Subpart C—Contract Disputes

§ 17.23 Dispute resolution process for contract disputes.

(a) All contract disputes arising under contracts subject to the AMS shall be resolved under this subpart.

(b) Contractors shall file contract disputes with the Office of Dispute Resolution for Acquisition and the CO pursuant to § 17.25.

(c) After filing the contract dispute, the contractor should seek informal resolution with the CO:

(1) The CO, with the advice of FAA legal counsel, has full discretion to settle contract disputes, except where the matter involves fraud;

(2) The parties shall have up to twenty (20) business days within which to resolve the dispute informally, and may contact the Office of Dispute Resolution for Acquisition for assistance in facilitating such a resolution; and

(3) If no informal resolution is achieved during the twenty (20) business day period, the parties shall file joint or separate statements with the Office of Dispute Resolution for Assistance pursuant to §17.27.

(d) If informal resolution of the contract dispute appears probable, the Office of Dispute Resolution for Acquisition shall extend the time for the filing of the joint statement under §17.27 for up to an additional twenty (20) business days, upon joint request of the CO and contractor.

(e) The Office of Dispute Resolution for Acquisition shall hold a status conference with the parties within ten (10) business days after receipt of the joint statement required by §17.27, or as soon thereafter as is practicable, in order to establish the procedures to be utilized to resolve the contract dispute.

(f) The Office of Dispute Resolution for Acquisition has broad discretion to recommend remedies for a successful contract dispute, that are consistent with the AMS and applicable law.

§ 17.25 Filing a contract dispute.

(a) Contract disputes are to be in writing and shall contain:

(1) The contractor’s name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor’s legal representative(s) (if any) for the contract dispute;

(2) The contract number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds for the contractor’s positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;

(4) All information establishing that the contract dispute was timely filed;

(5) A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and cancelled checks) attached, broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(b) Contract disputes shall be filed by mail, in person, by overnight delivery or by facsimile at the following address:

(1) Office of Dispute Resolution for Acquisition, Federal Aviation Administration, AGC–70, 3rd Floor, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3290, facsimile: (202) 267–3720; or

(2) Other address as shall be published from time to time in the Federal Register.

(c) A contract dispute against the FAA shall be filed with the Office of Dispute Resolution for Acquisition within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a
§ 17.27 Submission of joint or separate statements.

(a) If the matter has not been resolved informally, the parties shall file joint or separate statements with the Office of Dispute Resolution for Acquisition no later than twenty (20) business days after the filing of the contract dispute. The Office of Dispute Resolution for Acquisition may extend this time, pursuant to §17.23(d).

(b) The statement(s) shall include either—

(1) A joint request for ADR, and an executed ADR agreement, pursuant to §17.33(d), specifying which ADR techniques will be employed; or

(2) Written explanation(s) as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed.

(c) Such statements shall be directed to the following address:

(1) Office of Dispute Resolution for Acquisition, Federal Aviation Administration, AGC-70, 3rd Floor, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3290, facsimile: (202) 267–3720; or

(2) Other address as shall be published from time to time in the Federal Register.

(d) The submission of a statement which indicates that ADR will not be utilized will not in any way preclude the parties from engaging in informal ADR techniques with the Office of Dispute Resolution for Acquisition (neutral evaluation and/or informal mediation) concurrently with ongoing adjudication under the Default Adjudicative Process, pursuant to §17.31(c).


§ 17.29 Dismissal or summary decision of contract disputes.

(a) Any party may request, by motion to the Office of Dispute Resolution for Acquisition, that a contract dispute be dismissed, or that a count or portion of a contract dispute be stricken, if:

(1) It was not timely filed with the Office of Dispute Resolution for Acquisition;

(2) It was filed by a subcontractor;

(3) It fails to state a matter upon which relief may be had; or

(4) It involves a matter not subject to the jurisdiction of the Office of Dispute Resolution for Acquisition.

(b) In connection with any request for dismissal of a contract dispute, or to strike a count or portion thereof, the Office of Dispute Resolution for Acquisition should consider any material facts in dispute in a light most favorable to the party against whom the request for dismissal is made.
§ 17.33 Election of alternative dispute resolution process.

(a) The Office of Dispute Resolution for Acquisition will make its personnel available to serve as Neutrals in ADR proceedings and, upon request by the parties, will attempt to make qualified non-FAA personnel available to serve as Neutrals through neutral-sharing programs and other similar arrangements. The parties may elect to employ a mutually Compensated Neutral, if the parties agree as to how the costs of any such Compensated Neutral are to be shared.

(b) The parties using an ADR process to resolve a protest shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition within five (5) business days after the Office of Dispute Resolution for Acquisition conducts a status conference pursuant to §17.17(c). The Office of Dispute Resolution for Acquisition may extend this time for good cause.

(c) The parties using an ADR process to resolve a contract dispute shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition as part of the joint statement specified under §17.27.
§ 17.35  Selection of neutrals for the alternative dispute resolution process.

(a) In connection with the ADR process, the parties may select a Compensated Neutral acceptable to both, or may request the Office of Dispute Resolution for Acquisition to provide the services of a DRO or other Neutral.

(b) In cases where the parties select a Compensated Neutral who is not familiar with Office of Dispute Resolution for Acquisition procedural matters, the parties or Compensated Neutral may request the Office of Dispute Resolution for Acquisition in informal ADR techniques (neutral evaluation and/or informal mediation) concurrently with adjudication, pursuant to §17.31(c).

(f) Binding arbitration may be permitted by the Office of Dispute Resolution for Acquisition on a case-by-case basis; and shall be subject to the provisions of 5 U.S.C. 575(a), (b), and (c), and any other applicable law. Arbitration that is binding on the parties, subject to the Administrator’s right to approve or disapprove the arbitrator’s decision, may also be permitted.

(g) For protests, the ADR process shall be completed within twenty (20) business days from the filing of an executed ADR agreement with the Office of Dispute Resolution for Acquisition unless the parties request, and are granted an extension of time from the Office of Dispute Resolution for Acquisition.
protester and any intervenor(s) must submit to the Office of Dispute Resolution for Acquisition written comments with respect to the Product Team Response within five (5) business days of the Response having been filed with the Office of Dispute Resolution for Acquisition or within five (5) business days of their receipt of the Response, whichever is later. Copies of such comments shall be provided to the other participating parties by the same means and on the same date as they are furnished to the Office of Dispute Resolution for Acquisition.

(d) The DRO or Special Master may convene the parties and/or their representatives, as needed, to pursue the Default Adjudicative Process.

(e) If, in the sole judgment of the DRO or Special Master, the parties have presented written material sufficient to allow the protest to be decided on the record presented, the DRO or Special Master shall have the discretion to decide the protest on that basis.

(f) The parties may engage in voluntary discovery with one another and, if justified, with non-parties, so as to obtain information relevant to the allegations of the protest. The DRO or Special Master may also direct the parties to exchange, in an expedited manner, relevant, non-privileged documents. Where justified, the DRO or Special Master may direct the taking of deposition testimony, however, the FAA dispute resolution process does not contemplate extensive discovery. The DRO or Special Master shall manage the discovery process, including limiting its length and availability, and shall establish schedules and deadlines for discovery, which are consistent with time frames established in this part and with the FAA policy of providing fair and expeditious dispute resolution.

(g) The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings will be conducted:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the protest, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties’ written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(h) The Director of the Office of Dispute Resolution for Acquisition may review the status of any protest in the Default Adjudicative Process with the DRO or Special Master during the pendency of the process.

(i) Within thirty (30) business days of the commencement of the Default Adjudicative Process, or at the discretion of the Office of Dispute Resolution for Acquisition, the DRO or Special Master will submit findings and recommendations to the Office of Dispute Resolution for Acquisition that shall contain the following:

(1) Findings of fact;

(2) Application of the principles of the AMS, and any applicable law or authority to the findings of fact;

(3) A recommendation for a final FAA order; and

(4) If appropriate, suggestions for future FAA action.

(j) In arriving at findings and recommendations relating to protests, the DRO or Special Master shall consider whether or not the Product Team actions in question had a rational basis, and whether or not the Product Team decision under question was arbitrary, capricious or an abuse of discretion. Findings of fact underlying the recommendations must be supported by substantial evidence.

(k) The DRO or Special Master has broad discretion to recommend a remedy that is consistent with §17.21.

(l) A DRO or Special Master shall submit findings and recommendations
Only to the Director of the Office of Dispute Resolution for Acquisition. The findings and recommendations will be released to the parties and to the public, only upon issuance of the final FAA order in the case. Should an Office of Dispute Resolution for Acquisition protective order be issued in connection with the protest, a redacted version of the findings and recommendations, omitting any protected information, shall be prepared wherever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations.

(m) The time limitations set forth in this section may be extended by the Office of Dispute Resolution for Acquisition for good cause.

§ 17.39 Default adjudicative process for contract disputes.

(a) The Default Adjudicative Process for contract disputes will commence on the latter of:

(1) The parties' submission to the Office of Dispute Resolution for Acquisition of a joint statement pursuant to §17.27 which indicates that ADR will not be utilized; or

(2) The parties' submission to the Office of Dispute Resolution for Acquisition of notification by any party that the parties have not settled some or all of the dispute issues via ADR, and it is unlikely that they can do so within the time period allotted and/or any reasonable extension.

(b) Within twenty (2) business days of the commencement of the Default Adjudicative Process, the Product Team shall prepare and submit to the Office of Dispute Resolution for Acquisition, with a copy to the contractor, a chronologically arranged and indexed Dispute File, containing all documents which are relevant to the facts and issues in dispute. The contractor will be entitled to supplement such a Dispute File with additional documents.

(c) The Director of the Office of Dispute Resolution for Acquisition shall assign a DRO or a Special Master to conduct fact-finding proceedings and provide findings and recommendations concerning the issues in dispute.

(d) The Director of the Office of Dispute Resolution for Acquisition may delegate authority to the DRO or Special Master to conduct a Status Conference within ten (10) business days of the commencement of the Default Adjudicative Process, and, may further delegate to the DRO or Special Master the authority to issue such orders or decisions to promote the efficient resolution of the contract dispute.

(e) At any such Status Conference, or as necessary during the Default Adjudicative Process, the DRO or Special Master will:

(1) Determine the appropriate amount of discovery required to resolve the dispute;

(2) Review the need for a protective order, and if one is needed, prepare a protective order pursuant to §17.9;

(3) Determine whether any issue can be stricken; and

(4) Prepare necessary procedural orders for the proceedings.

(f) At a time or at times determined by the DRO or Special Master, and in advance of the decision of the case, the parties shall make final submissions to the Office of Dispute Resolution for Acquisition and to the DRO or Special Master, which submissions shall include the following:

(1) A joint statement of the issues;

(2) A joint statement of undisputed facts related to each issue;

(3) Separate statements of disputed facts related to each issue, with appropriate citations to documents in the Dispute File, or pages of transcripts of any hearing or deposition, or to any affidavit or exhibit which a party may wish to submit with its statement;

(4) Separate legal analyses in support of the parties' respective positions on disputed issues.

(g) Each party shall serve a copy of its final submission on the other party by means reasonable calculated so that the other party receives such submissions on the same day it is received by the Office of Dispute Resolution for Acquisition.

(h) The DRO or Special Master may decide the contract dispute on the basis of the record and the submissions referenced in this section, or may, in
the DRO or Special Master’s discretion, allow the parties to make additional presentations in writing. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings on the record shall be conducted by the ODRA:

1. Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

2. Upon request of any party to the contract dispute, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

The DRO or Special Master shall prepare findings and recommendations within thirty (30) business days from receipt of the final submissions of the parties, unless that time is extended by the Officer of Dispute Resolution for Acquisition for good cause. The findings and recommendations shall contain findings of fact, application of the principles of the AMS and other law or authority applicable to the findings of fact, a recommendation for a final FAA order, and, if appropriate, suggestions for future FAA action.

As a party of the findings and recommendations, the DRO or Special Master shall review the disputed issue or issues in the context of the contract, any applicable law and the AMS. Any finding of fact set forth in the findings and recommendations must be supported by substantial evidence.

The Director of the Office of Dispute Resolution for Acquisition may review the status of any contract dispute in the Default Adjudicative Process with the DRO or Special Master during the pendency of the process.

1. A DRO or Special Master shall submit findings and recommendations only to the Director of the Office of Dispute Resolution for Acquisition. The findings and recommendations will be released to the parties and to the public, upon issuance of the final FAA order in the case. Should an Office of Dispute Resolution for Acquisition protective order be issued in connection with the contract dispute, a redacted version of the findings and recommendations omitting any protected information, shall be prepared whenever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personal shall be provided copies of the unredacted findings and recommendation.

The time limitations set forth in this section may be extended by the Office of Dispute Resolution for Acquisition for good cause.

Attorneys fees of a qualified prevailing contractor are allowable to the extent permitted by the EAJA, 5 U.S.C. 504 (a)(1).


**Subpart F—Finality and Review**

§ 17.41 Final orders.

All final FAA orders regarding protests or connect disputes under this part are to be issued by the FAA Administrator or by a delegate of the Administrator.

§ 17.43 Judicial review.

(a) A protestor or contractor may seek of a final FAA order, pursuant to 49 U.S.C. 46110, only after the administrative remedies of this part have been exhausted.

(b) A copy of the petition for review shall be filed with the Office of Dispute Resolution for Acquisition and the FAA Chief Counsel on the date that the petition for review is filed with the appropriate circuit court of appeals.
§ 17.45 Conforming amendments.

The FAA shall amend pertinent provisions of the AMS, standard contract forms and clauses, and any guidance to contracting officials, so as to conform to the provisions of this part.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

A. The FAA dispute resolution procedures encourage the parties to protests and contract disputes to use ADR as the primary means to resolve protests and contract disputes, pursuant to the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320, 5 U.S.C. 570–579, and Department of Transportation and FAA policies to utilize ADR to the maximum extent practicable. Under the procedures presented in this part, the Office of Dispute Resolution for Acquisition would encourage parties to consider ADR techniques such as case evaluation, mediation, or arbitration.

B. ADR encompasses a number of processes and techniques for resolving protests or contract disputes. The most commonly used types include:

(1) Mediation. The Neutral or Compensated Neutral ascertains the needs and interests of both parties and facilitates discussions between or among the parties and an amicable resolution of their differences, seeking approaches to bridge the gaps between the parties’ respective positions. The Neutral or Compensated Neutral can meet with the parties separately, conduct joint meetings with the parties’ representatives, or employ both methods in appropriate cases.

(2) Neutral Evaluation. At any stage during the ADR process, as the parties may agree, the Neutral or Compensated Neutral will provide a candid assessment and opinion of the strengths and weaknesses of the parties’ positions as to the facts and law, so as to facilitate further discussion and resolution.

(3) Minitrial. The minitrial resembles adjudication, but is less formal. It is used to provide an efficient process for airing and resolving more complex, fact-intensive disputes. The parties select principal representatives who should be senior officials of their respective organizations, having authority to negotiate a complete settlement. It is preferable that the principals be individuals who were not directly involved in the events leading to the dispute and who, thus, may be able to maintain a degree of impartiality during the proceeding. In order to maintain such impartiality, the principals typically serve as “judges” over the mini-trial proceeding together with the Neutral or Compensated Neutral. The proceeding is aimed at informing the principal representatives and the Neutral or Compensated Neutral of the underlying bases of the parties’ positions. Each party is given the opportunity and responsibility to present its position. The presentations may be made through the parties’ counsel and/or through some limited testimony of fact witnesses or experts, which may be subject to cross-examination or rebuttal. Normally, witnesses are not sworn in and transcripts are not made of the proceedings. Similarly, rules of evidence are not directly applicable, though it is recommended that the Neutral or Compensated Neutral be provided authority by the parties’ ADR agreement to exclude evidence which is not relevant to the issues in dispute, for the sake of an efficient proceeding. Frequently, minitrials are followed either by direct one-on-one negotiations by the parties’ principals or by meetings between the Neutral/Compensated Neutral and the parties’ principals, at which the Neutral/Compensated Neutral may offer his or her views on the parties’ positions (i.e., Neutral Evaluation) and/or facilitate negotiations and ultimate resolution via Mediation.