DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No.: FAA–2018–1051; Amdt. No.: 13–40]

RIN 2120–AL00

Update to Investigative and Enforcement Procedures

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the procedural rules governing FAA investigations and enforcement actions. The revisions include updates to statutory and regulatory references, updates to agency organizational structure, elimination of inconsistencies, clarification of ambiguity, increases in efficiency, and improved readability.

DATES: Effective November 30, 2021.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

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

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Authority for This Rulemaking

FAA's authority to issue rules on aviation safety is in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. The Administrator has authority to issue regulations and procedures necessary for safety in air commerce and national security under 49 U.S.C. 44701(a)(5). The Administrator also has authority to prescribe regulations he considers necessary to carry out Subtitle VII, Part A of title 49 under 49 U.S.C. 40113(a).

This rulemaking is promulgated under the authority of numerous additional statutes relevant to procedures and other rules covering a wide variety of enforcement actions. Generally, this rulemaking relies on the duties and powers delegated to the Administrator of FAA under 49 CFR 1.83. It also relies on the power of the Administrator to conduct investigations; prescribe regulations, standards, and procedures; and issue orders per 49 U.S.C. 40113–40114. Sections 46101–46110 of title 49 U.S.C. contain procedures and other requirements governing investigations, enforcement, complaints of violations, service, evidence, regulations and orders, and judicial review. Section 6002 of title 18 U.S.C. is the authority for witness immunity in FAA formal investigations (see 14 CFR 13.119).

The Administrator's duties and powers related to aviation safety in 49 U.S.C. 44701, and the authority of the Administrator to issue, amend, modify, suspend, and revoke certificates per 49 U.S.C. 44702–44703, 44709–44710, 44724, 44726, and 46111 also provide authority for this rulemaking. The rulemaking further relies on the Administrator's power to impose and collect civil penalties under 49 U.S.C. 46301. The Administrator's powers with respect to aircraft maintenance (49 U.S.C. 44713, 44725), aircraft registration (49 U.S.C. 44103–44106), aircraft noise levels (49 U.S.C. 47531–47532), airports (49 U.S.C. 47106, 47107, 47111, 47122, and 47306), and hazardous materials (49 U.S.C. 5121–5124) are also part of the authority for this rulemaking. These various authorities prescribe the standards enforced via the procedures provided in part 13.

I. Overview of Final Rule

This rulemaking revises subparts A through G of part 13, which provide procedural rules governing investigations and enforcement actions taken by FAA. It updates statutory and regulatory references, eliminates inconsistencies, clarifies ambiguity, increases efficiency, and improves readability. There are no substantive amendments to subpart B, which addresses administrative actions, or to subpart F, which governs formal fact-finding investigations under orders of investigation. This final rule does, however, include substantive amendments to subparts A, C, D, E, and G.

Subpart A addresses FAA's investigative procedures. Amendments include a new re-delegation provision in § 13.1, applicable to the whole of part 13; removal of current § 13.5(e), which addresses complaints filed against

members of the armed services, to align with the removal of current § 13.21; and the addition of a definition for the date of service of a written answer to a formal complaint in § 13.5(e) in this final rule as no definition is provided in current § 13.5(f), which § 13.5(e) replaces.

Subpart C addresses legal enforcement actions. This final rule provides a new emergency procedure allowing for an expedited administrative appeal process when issuing a notice under 14 CFR 13.20(d) simultaneously with a temporary emergency order under 49 U.S.C. 40113 and 46105(c). FAA is amending § 13.13 to update the list of required elements for a proposed consent order to include a withdrawal of all requests for hearing or appeals in any forum as well as an express waiver of attorney's fees and costs. This final rule also amends § 13.17(a) to replace the term ''operator'' with ''the individual commanding the aircraft'' to align with the underlying statute. Finally, this final rule removes § 13.29 pertaining to FAA enforcement procedures against individuals who present dangerous or deadly weapons for screening at airports or in checked baggage, as these proceedings are now under the Transportation Security Administration's authority.

Current subpart D provides the rules of practice applicable to FAA hearings involving legal enforcement actions pertaining to certain FAA-issued certificates, hazardous materials violations by any person, and other types of enforcement actions. This final rule amends the applicability section of subpart D to no longer apply to hearings for emergency orders of compliance issued under the Hazardous Materials Transportation Act,[1] because 49 CFR part 109, DOT Hazardous Material Procedural Regulations, now provides the procedures for this process.

Additional amendments to subpart D recognize the role and function of FAA's Office of Adjudication and provide for the use of alternative dispute resolution (ADR) procedures. This final rule consolidates sections relating to filing and service; updates addresses; allows for filing and service by fax and email; clarifies the discovery process, including a modification to the subpoena rule; and consolidates and incorporates the appeal procedures stated in other subparts of part 13 into subpart D. Finally, a new provision in subpart D at § 13.67 provides an expedited review process for the subjects of emergency orders to which § 13.20 applies.

[1] 49 U.S.C. 5101–5127.

Subpart E provides for orders of compliance under the Hazardous Materials Transportation Act. This final rule harmonizes procedures associated with notices of proposed orders of compliance and consent orders issued under subpart E with procedures for non-hazardous material notices and orders in subpart C. This final rule also moves subpart D-related provisions regarding rules of practice in hearings from subpart E to subpart D, and updates procedures that have been superseded by subsequent amendments to the hazardous material (hazmat) statutes. Finally, this final rule adds a new cross-reference to the procedures in 49 CFR part 109, subpart C, applicable to hazmat emergency orders issued by all DOT modes.

Subpart G provides the rules of practice in FAA civil penalty actions. Just as with subpart D, this final rule amends subpart G to include recognition of FAA's Office of Adjudication, the use of mediation as an ADR procedure, and the addition of fax and email as options for filing and service. This final rule also codifies the current practice of treating timely petitions for reconsideration of administrative law judge (ALJ) initial decisions as appeals to the FAA decisionmaker. Additionally, this final rule requires a party applying for a subpoena to make a showing of the general relevance and reasonable scope of the evidence sought by the subpoena. Other changes codify existing practices and create consistency within subpart G.

II. Background

A. Statement of the Problem

The majority of the rules in part 13 were last amended a decade or more ago. Since then, there have been statutory, organizational, and technological changes that necessitate updates. This rulemaking updates outdated statutory references and reflects the organizational changes made in FAA's Office of the Chief Counsel prior to the publication of the notice of proposed rulemaking (NPRM) (84 FR 3614, February 12, 2019), including the revised position titles and new offices within the Office of the Chief Counsel described in the NPRM.

Additionally, this final rule updates many antiquated provisions in the current part 13. Adoption of fax and email as additional options in the filing and service provisions make these administrative proceedings more efficient, expeditious, and cost-effective. The final rule also provides for use of ADR in subpart D and subpart G proceedings. ADR is now commonplace in Federal courts and other agencies, but has not been an option in the current part 13 provisions.

In some instances, the current rules do not reflect procedures and practices in part 13 that have evolved or been refined since the last amendment of these rules. This final rule captures these procedures and practices. For example, it incorporates the informal practice of serving the ALJ in subpart G civil penalty provisions in addition to the filing of documents with FAA's Hearing Docket. The final rule also codifies the current practice of treating certain motions and orders as notices of appeal to the FAA decisionmaker.

This final rule adds a new administrative appeal process for emergency orders to which § 13.20 applies. In the current regulation, the only recourse for litigating such an order is a direct appeal under 49 U.S.C. 46110 to a U.S. court of appeals, without an opportunity to develop a record through the administrative process before appellate review. The new process balances the Administrator's interest in responding to conditions posing an immediate threat to public safety with the interest of providing subjects of these emergency orders a meaningful post-deprivation administrative process.

Finally, many of the changes in this final rule address discrepancies between similar provisions across part 13 and harmonize the rules of practice in agency enforcement proceedings. Other amendments reword and reorganize provisions for clarity and ease of use.

B. Summary of the NPRM

The NPRM was published in the **Federal Register** on February 12, 2019 (84 FR 3614). The comment period for the NPRM closed on May 13, 2019. The NPRM proposed substantive amendments to subparts A, C, D, E, and G. Proposed amendments in the NPRM include:

- Streamlining and updating statutory and regulatory references, eliminating inconsistencies, clarifying existing ambiguities, increasing efficiency, and improving readability;
- Amending the required elements of proposed consent orders to include a withdrawal of any pending request for hearing or appeal and an express waiver of attorney's fees and costs;
- Adding service and filing by fax and email in subpart D and subpart G proceedings;
- Amending subparts D and G that recognize the role and function of FAA's Office of Adjudication;

- Clarifying, updating, and aligning the provisions in subparts D and G for requesting, quashing, modifying, and enforcing subpoenas;
- Adding ADR as an option for parties who have requested a subpart D or subpart G hearing (which may help lower the number of subpart D and subpart G hearings);
- Adding a request for an informal conference as an option for replying to a hazardous materials notice of proposed order of compliance issued under subpart E to reflect current practice and harmonize the options for responding to a notice throughout part 13;
- Adding an expedited administrative appeal process for emergency orders issued under 14 CFR 13.20, including orders of compliance and cease and desist orders, but not including hazardous materials orders that are separately addressed in subpart E; and
- Removing the ''mailing rule,'' in subpart G, that automatically extends parties' deadlines by five days when served by mail. Instead, a party requiring additional time would need to seek an extension of time.

C. General Overview of Comments

FAA received comments from nine commenters. Commenters included the Administrative Conference of the United States (ACUS), the Air Line Pilots Association (ALPA), the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), and the National Business Aviation Association (NBAA). These commenters generally supported the proposed changes. Some of these commenters, however, suggested changes, which FAA discusses in more detail later in this preamble. Additionally, four individuals commented. Some of the individuals' comments fell outside the scope of this rulemaking, and others are discussed in more detail later in this preamble.

FAA received comments on the following general areas of the proposal:

- FAA's Authority;
- Service of Formal Complaints;
- Date of Service of a Formal Complaint;
- FAA Actions Resulting from Formal Complaints;
- Administrative Actions;
- Consent Orders;
- Deposition Authority;
- Witness Fees;
- Record on Appeal;
- Appeals and Judicial Review;
- Expedited Proceedings;
- Dispute Resolution;
- Federal Docket Management System and Use of Email for Filing and Service;
- Time for Responding after Service by Mail;
- Valid Service of Documents;
- Disqualification/Recusal;
- Motion for a More Definite Statement; and
- Technological Advances in all Adjudications and Proceedings.

III. Discussion of Public Comments and Final Rule

A. FAA's Authority

Current § 13.3(a) notes the Administrator's statutory authority to conduct investigations and perform related functions, including the issuance of investigative subpoenas. Current § 13.3(b) contains the delegation of the Administrator's investigative powers for routine investigations to FAA's various services and offices for matters within their respective areas of oversight responsibility. It also delegates the Administrator's powers for compulsory processes to certain officials in the Office of the Chief Counsel. Current § 13.3(c) provides that those delegated officials in the Office of the Chief Counsel may issue orders of investigation per the formal investigation process in subpart F. Current § 13.3(d) addresses complaints about violations of certain airport-related laws.

In the NPRM, FAA proposed to revise § 13.3 to update and simplify the language by removing the statutory citations. FAA also proposed reorganizing § 13.3(b) and (c) so that § 13.3(b) would solely address the Administrator's delegation of investigative powers for routine investigations, and § 13.3(c) would pertain only to the Administrator's delegation of powers for certain compulsory processes. Further, FAA proposed revising § 13.3(c) by listing the actions authorized by the statutes cited in the second sentence of current § 13.3(b).

NBAA requested FAA combine proposed §§ 13.3(a) and (c) into a single paragraph. NBAA stated that proposed § 13.3(a) and (c) are duplicative and likely to cause misunderstandings about FAA's authority under proposed § 13.1. NBAA further asserted that confusion stemming from current § 13.3 has led to FAA issuing subpoenas that are not appropriately limited. It therefore requested that the rule be revised to limit the Administrator's authority to issue subpoenas to that provided in proposed §§ 13.57, 13.111, and 13.228. In support, NBAA stated that full procedural protections for challenging subpoenas are available in subparts D, F, and G. NBAA urged that if FAA needs to issue subpoenas, FAA should issue an Order of Investigation under subpart F. According to NBAA, FAA has ''unlimited discretion as to the scope of inquiry and limits due process while obtaining the very evidence FAA will then use against the company or individual to prosecute the FAA's case.'' Lastly, NBAA stated its concerns that subpoenas issued to individuals are contrary to the Pilot's Bill of Rights (PBR),[2] while subpoenas issued to businesses coerce production of evidence contrary to the Compliance Philosophy.[3]

FAA does not agree that § 13.3(a) and (c) are duplicative, or that they should be combined. Proposed § 13.1 applies to all of part 13 and provides broadly that the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement may redelegate any authority they have under part 13. Proposed § 13.3 mentions the powers of the Administrator generally with regard to investigations. Although proposed § 13.3(a) and (c) both include powers of the Administrator, these paragraphs are not duplicative. Proposed paragraph (a) contains the same list of the Administrator's statutory powers as in current § 13.3(a). Proposed paragraph (c) captures the delegation in the second sentence of current § 13.3(b), pertaining to the Administrator's statutory authority with regard to ''compulsory processes,'' to certain officials in the Office of the Chief Counsel.[4] Rather than use the vague description ''compulsory processes,'' proposed § 13.3(c) identifies what those processes are. Thus, some of the Administrator's powers mentioned in proposed paragraph (a) are delegated to certain officials in the Office of the Chief Counsel by proposed paragraph (c). These paragraphs also perform different functions; one describes, the other delegates.

Next, FAA does not agree that the subpoena authority provided by this rule should be limited in the manner requested by NBAA. Subpoenas issued under proposed § 13.3(c) (and proposed § 13.111 in the context of a formal investigation) are an exercise of the power of an administrative agency to investigate possible violations of and

[2] The Pilot's Bill of Rights, Public Law 112–153, 126 Stat. 1159 (2012) (codified at 49 U.S.C. 44703 note).

[3] Compliance Philosophy was renamed Compliance Program in October 2018. *https://www.faa.gov/about/initiatives/cp/* (last visited November 1, 2019).

[4] The sections of the Federal Aviation Act and Hazardous Materials Transportation Act cited there are now codified at 49 U.S.C. 40108, 40113, 40114, 45302, 46104 and 47122.

confirm compliance with law.[5] When FAA seeks to enforce one of these investigative subpoenas, it must show that ''the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant.'' [6] So, contrary to NBAA's concerns, FAA's investigative subpoena power is not unlimited, and the subject of an investigative subpoena has a means to contest it. Finally, neither the PBR nor FAA's Compliance Program address investigative subpoenas. The PBR provisions NBAA refers to in its comment only concern Letters of Investigation.[7] FAA issues investigative subpoenas to obtain evidence during an investigation, while the decision to take compliance action occurs after conducting a thorough investigation.[8] FAA made no changes as a result of this comment.

Based on the foregoing discussion, FAA is not making any changes to its proposal for § 13.3 based on NBAA's comments. However, as explained in more detail in section III.S. of this preamble, the final rule amends proposed paragraph (c) of § 13.3 to align with the statutory language containing the delegated authority.

B. Service of Formal Complaints

The current § 13.5 provides that FAA will mail a copy of the formal complaint to ''each person named in the complaint.'' In the NPRM, FAA proposed to change this language so that FAA would mail a copy to ''the subject(s) of the complaint.''

EAA requested that FAA withdraw the proposed change in the language describing who would receive copies of a formal complaint. EAA stated the proposed change would mean that witnesses and ''interested parties'' mentioned in a complaint would not be entitled to receive a copy. In support of its comment, EAA cited the public nature of the concerns often raised by complaints.

FAA has consistently mailed copies of formal complaints only to those persons accused of a violation (''subjects''). The proposed language therefore matches FAA's longstanding practice. FAA finds it would be inappropriate to serve copies of a formal complaint on anyone other than those accused in the complaint. FAA uses the formal complaint, and answer if filed, to determine if there are reasonable grounds for an investigation. Even if there are reasonable grounds, the investigation may not substantiate a violation. Serving a copy of a complaint on persons whose names appear in the complaint, but who are not the individual alleged to have committed a violation (*e.g.,* a witness), is unnecessary, particularly when FAA has not yet determined if an investigation into the complaint is even appropriate. FAA can contact witnesses and other relevant parties as part of any investigation justified by the complaint. Further, release of the formal complaint to persons other than the alleged violator(s) could violate the Privacy Act, as a formal complaint may contain personally identifiable information (PII). Therefore, FAA has adopted this rule as proposed in the NPRM.

C. Date of Service of a Formal Complaint

Current § 13.5(f) requires that an answer to a complaint be filed within 20 days after service. In the NPRM, FAA proposed moving the provisions of current § 13.5(f) to § 13.5(e) and adding language to clarify that the date of service of the complaint is the date of mailing.

EAA requested that FAA not implement these proposed changes. EAA stated that using the date of mailing is contrary to ''due process notions of service and notice'' and fails to take into account lost mailings. According to EAA, this would conflict with the proposed language in § 13.18(e), which uses the date of receipt, as well as the PBR and Rule 4 of the Federal Rules of Civil Procedure. Lastly, EAA stated that the proposed change would create a presumption of service even when there is no constructive or actual service.

Using the date of mailing as the date of service is a common provision in both an FAA statute and in other procedural regulations.[9] Under 49 U.S.C. 46103(b)(1)(C) and (b)(2), the Administrator may generally serve a person by certified or registered mail, with the date of mailing deemed the date of service.[10] This is consistent with due process requirements.[11] Current and proposed §§ 13.43 and 13.211 provide that the date of mailing is the date of service on a party when a document is mailed in subpart D hearings. The NTSB's Rules of Practice in Air Safety Proceedings also designate the date of mailing to be the date of service.[12]

Concerns regarding PBR are misplaced, as the PBR does not apply to formal complaints. Section 2, paragraph (a) of the PBR states that a ''proceeding conducted under subpart C, D, or F of part 821 of title 49, Code of Federal Regulations, relating to denial, amendment, modification, suspension, or revocation of an airman certificate, shall be conducted, to the extent practicable, in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.'' [13] Formal complaints are not conducted under 49 CFR part 821, subpart C, D, or F. No other part of the PBR applies to formal complaints. FAA is therefore adopting the proposed rule without change.

Finally, EAA's reliance on proposed § 13.18(e) is misplaced. The proposed language in § 13.18(e) permits the Administrator to issue an order of assessment if an individual does not respond to a notice of proposed assessment within 15 days of receipt. Thus, it neither defines the date of service nor conflicts with proposed § 13.5(e).

D. FAA Actions Resulting From Formal Complaints

Current § 13.5(j) is restated in proposed § 13.5(g). In general, it provides that if an investigation resulting from a formal complaint substantiates any allegation of wrongdoing, FAA may take enforcement action.

EAA requested FAA revise proposed § 13.5(g) to allow the Administrator to issue administrative or compliance action when an investigation substantiates the allegations in a complaint, in accordance with FAA's compliance and enforcement order, FAA Order 2150.3C. EAA expressed

[5] *U.S.* v. *Morton Salt Co.,* 338 U.S. 632, 642–43 (1950).

[6] *Id.* at 652.

[7] PBR, section 2(b)(2)(C) and (D).

[8] FAA Order 2150.3C, Chapter 4, ¶ 2.b.

[9] *See NLRB* v. *Local 264, Laborers' Int'l Union of N. Am.,* 529 F.2d 778, 784 (8th Cir. 1976) (noting, in finding that NLRB had power to create rule establishing date of mailing as date of service, that this kind of rule was ''not novel or unique'' and that ''it had been explicitly sanctioned'' in Fed. R. Civ. P. 5(b) and several administrative agencies' procedures).

[10] *See Skydive Myrtle Beach Inc.* v. *Horry Cty. Dept. of Airports,* 735 F. App'x 810, 814 (4th Cir. 2018) (stating that § 46103(b) articulates the proper methods of service for proceedings resulting from the enforcement of Part A of Subtitle VII of Title 49); *cf. Avia Dynamics, Inc.* v. *FAA,* 641 F.3d 515, 520 (D.C. Cir. 2011) (holding that informal orders of an advisory nature are not subject to the procedural requirements in section 46103); *Adm'r* v. *Dangberg,* NTSB Order No. EA–5694, 2013 WL 7206204, at *3 (Dec. 18, 2013) (stating that in proceedings before National Transportation Safety Board, section 46103(b)(2), not Fed. R. Civ. P. 4, governs date of service for FAA orders served on certificate holders).

[11] *See Jones* v. *Flowers,* 547 U.S. 220, 226 (2006) (in which the Supreme Court stated that certified mail service is constitutionally sufficient where it is ''reasonably calculated to reach the intended recipient when sent'').

[12] 49 CFR 821.7(a)(4) and 821.8(e).

[13] Public Law 112–153, 126 Stat. 1159, section 2(a) (2012) (codified at 49 U.S.C. 44703 note).

concern that proposed § 13.5(g), because it solely references the issuance of a notice of proposed order or other enforcement action, could be construed to prohibit FAA from taking administrative action or compliance action.

FAA did not intend to limit its ability to choose an appropriate response to a violation of law, including taking administrative or compliance action. Therefore, in this final rule FAA has amended § 13.5(g) to make clear that the Administrator may take action in accordance with applicable law and FAA policy if an investigation substantiates allegations set forth in a complaint.

E. Administrative Actions

Section 13.11 currently states that FAA may take administrative action rather than legal enforcement action for a violation or apparent violation and defines such administrative action. In the NPRM, FAA proposed updating the statutory references and simplifying the language for readability, without changing the requirements of this section.

EAA and NBAA requested that FAA further amend § 13.11 to include compliance actions, consistent with FAA Order 8000.373A, ''Federal Aviation Administrative Compliance Program'' (which created compliance actions), as an option for addressing a violation.

The requested changes are unnecessary. FAA established the Compliance Program, including compliance actions, in 2015.[14] It is an agency policy relying in part on the agency's prosecutorial discretion. Accordingly, FAA did not need to codify it in its regulations. Instead, FAA implemented the policy in FAA Order 8000.373A and further addressed it in FAA Order 2150.3C, ''FAA Compliance and Enforcement Program,'' and FAA Order 8900.1, ''Flight Standards Information Management System.'' The absence of an express reference to compliance actions in part 13 does not prevent FAA from taking compliance actions where appropriate.

In addition, despite retaining the reference to administrative action, this rulemaking, and part 13 generally, focuses primarily on two areas: (1) How the Office of the Chief Counsel conducts legal enforcement actions; and (2) due process for those subject to legal enforcement action. Compliance actions are not legal enforcement actions, and the Office of the Chief Counsel does not administer compliance actions. Therefore, FAA did not change the final rule in response to these comments and adopts § 13.11 as proposed.

F. Consent Orders

Current § 13.13 addresses disposition of a legal enforcement action through a consent order. Paragraph (b) specifies the required contents for a consent order. In the NPRM, FAA proposed retaining most of the existing requirements and adding requirements for an express waiver of attorney's fees and costs, and a withdrawal of the request for hearing or notice of appeal.

NBAA requested that FAA amend the rule to allow for consent orders that do not include all the required terms listed in proposed § 13.13(b). In support of this request, NBAA expressed concern that the proposed changes to § 13.13(b) would take away the ability of the parties to negotiate consent order terms such as fees and costs, or waive these requirements in certain circumstances.

As a matter of practice, FAA's experience is that certain terms of a consent agreement are non-negotiable. This rule codifies FAA's expectations, for transparency. If the subject of an enforcement action wants the benefits of a consent order, it must be willing to include the terms in § 13.13(b). FAA did not change the final rule in response to this comment, and adopts this section as proposed.

G. Deposition Authority

Section 13.37 currently sets forth the powers of a hearing officer in subpart D hearings, while § 13.205 sets forth the powers of an ALJ in subpart G hearings. In the NPRM, FAA proposed clarifying revisions to these sections, including removing language regarding depositions from §§ 13.37(e) and 13.205(a)(3), adding language regarding discovery to § 13.37(h), and adding language allowing a hearing officer or ALJ to take any other authorized action as new paragraph (m) in § 13.37 and new paragraph (a)(11) in § 13.205.

EAA requested that FAA preserve the language regarding depositions in current §§ 13.37(e) and 13.205(a)(3). Specifically, EAA stated that despite the additional language proposed by FAA, these sections would no longer expressly empower hearing officers and ALJs to take or require depositions.

FAA does not agree to preserve this language. The proposed amendments to §§ 13.37(e) and 13.205(a)(3) do not eliminate the ability for hearing officers or ALJs to require the taking of depositions. Hearing officers retain the authority under § 13.37 to regulate discovery proceedings in subpart D hearings. Depositions are included as a form of discovery in proposed § 13.53(d). Parties may apply for a subpoena to require attendance at a deposition under § 13.57. In subpart G hearings, parties may serve notices of depositions, as described in proposed § 13.220(j)(3), and file motions to compel discovery under § 13.220(m). Inasmuch as both subparts D and G provide for depositions and motions to compel, FAA's proposed changes maintain the authority of hearing officers and ALJs with regard to depositions. Additionally, as EAA recognized, the proposed rule includes a catch-all power for hearing officers and ALJs to regulate depositions. FAA did not change the final rule in response to this comment and adopts the deposition authority as proposed.

H. Witness Fees

Current §§ 13.57 and 13.229 address witness fees in subpart D and subpart G hearings, respectively. Section 13.57(d) allows a hearing officer to shift the burden of paying a witness from the party requesting the witness's appearance to FAA under certain conditions. Section 13.229(a) requires the party requesting the witness's appearance to pay witness fees unless otherwise authorized by the ALJ. In the NPRM, FAA proposed, among other changes, removing these fee-shifting provisions.

EAA requested that FAA retain the fee-shifting authority in § 13.57(d) and incorporate it into § 13.229. In support of this request, EAA stated that FAA enjoys a financial advantage over respondents.

As explained in the NPRM, the current fee-shifting authority has not been used, is not supported by any identified statutory authority, and runs contrary to the American Rule [15] that parties pay their own costs. Parties seeking to recover fees and expenses in subpart G hearings may still pursue an award under the Equal Access to Justice Act of 1980 (''EAJA'') [16] and FAA's Rules Implementing the EAJA (14 CFR part 14). FAA did not change the final rule in response to this comment, and adopts §§ 13.57(d) and 13.229 as proposed.

I. Record on Appeal

Current § 13.63 describes the contents of the record in a subpart D hearing. The NPRM proposed redesignating the

[14] FAA Order 8000.373 (June 26, 2015) (canceled by Order 8000.373A in 2018); *see generally https://www.faa.gov/about/initiatives/cp/* (last visited July 7, 2020).

[15] *Alyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U.S. 240 (1975).

[16] 28 U.S.C. 2412.

existing provisions as § 13.63(a) and adding new provisions at § 13.63(b) and (c).

EAA noted that the proposed amendment to § 13.63(a) may unintentionally exclude from the appeal record exhibits that are offered at the subpart D hearing but not admitted into evidence. The commenter added that the proposed language was inconsistent with proposed § 13.225 in subpart G.

FAA agrees that evidence offered as exhibits at a hearing but not admitted into evidence should still be a part of the record on appeal, as provided in the proposed subpart G provisions. FAA has amended § 13.63(a) in this final rule to clarify that the record on appeal will include evidence proffered but not admitted at the hearing, consistent with proposed §§ 13.225 and 13.230(a).

J. Appeals and Judicial Review

In the NPRM, FAA proposed adding a new § 13.65 to consolidate all provisions for appeals, motions for reconsideration, and petitions for judicial review for subpart D hearings into one section. Proposed § 13.65(e) delineates the authority of the Director of the Office of Adjudication as advisor to the Administrator for appeals.

EAA requested that FAA add a provision requiring notice and an opportunity for review. In support, EAA expressed concern that the proposed § 13.65(e) substantively expands the power of the Office of Adjudication.

The proposed revisions do not expand the power of the Office of Adjudication. Rather, § 13.65(e) merely codifies powers previously delegated to the Director of the Office of Adjudication by the FAA Administrator. Additional information on this delegation is contained in the Notice of Delegation of Authority published in the **Federal Register** on April 26, 2016 (81 FR 24686). FAA did not change the final rule in response to this comment, and adopts § 13.65(e) as proposed.

K. Expedited Proceedings

In the NPRM, FAA proposed adding a new § 13.67 to provide an expedited hearing and appeal process for emergency proceedings requested in accordance with § 13.20(d). New § 13.67(a) gives accelerated deadlines for developing the record, commencing the hearing, and issuing the hearing officer's decision.

EAA requested that FAA change the time for respondents to file an answer from 3 days to 10 days. In support of this request, EAA noted that three days is not enough time for a party to evaluate the complaint, secure counsel, and file an answer. EAA further distinguished the 3 days in the proposed rule from the 10 days allowed in proceedings before the National Transportation Safety Board (NTSB) under 49 CFR 821.53.

FAA finds that three days to provide an answer is reasonable considering an expedited hearing must commence within 40 days under proposed § 13.67(a)(6). The 40-day deadline is driven by the 80-day period during which FAA's time-limited (or temporary) emergency order is effective. The process in § 13.67 allows a respondent to have both a hearing and an appeal to the Administrator completed prior to the expiration of the 80-day time-limited immediately effective order. The subject of the action will already be familiar with the complaint, as proposed § 13.67(a)(2) provides that the Administrator files a copy of the notice of proposed action as the complaint. Under proposed §§ 13.20(d)(3) and 13.67(a)(2) and (3), the subject has 10 days from service of the notice of proposed action to appeal from the notice by requesting a hearing, FAA has 3 days after the receipt of the request for a hearing to file the notice as its complaint, and the subject has 3 days after receipt of the complaint to file an answer to the complaint. Therefore, a subject may have as many as 16 days (or more, considering holidays or weekend days that may extend deadlines per proposed § 13.45(a)) from first seeing the allegations in which to decide whether to secure counsel and to file an answer. FAA finds this provides adequate notice and time for subjects to secure counsel.

Additionally, the commenter's comparison to the NTSB's 10-day period for filing an answer is not germane, as that longer filing period only applies to answers filed in non-emergency NTSB appeals. For emergency appeals, the NTSB provides five days to answer, which is comparable to the period in subpart D.[17] The proposed § 13.67(a)(3) deadline is necessarily shorter than for actions that are not immediately effective, as the expedited process is designed to finish within 80 days. Additionally, the commenter's comparison to 49 CFR 821.53 is not germane as that provision does not address the time for filing an answer, but rather the time for an appeal of FAA's emergency order to the NTSB. FAA did not change the final rule in response to this comment, and adopts the provisions on expedited proceedings as proposed.

[17] 49 CFR 821.55(b).

L. Dispute Resolution

In the NPRM, FAA proposed adding new §§ 13.69 and 13.236 to provide parties pursuing an appeal under subpart D or G, respectively, an opportunity to resolve the matter through mediation. Both sections proposed that any mediator used be mutually acceptable to the parties and be prohibited from participating in a subsequent adjudication of the same matter.

Comment on Separation of Functions

NBAA requested that FAA revise the proposed rules to clarify that the Office of Adjudication will not be involved in mediation for any matter for which that Office could serve as an advisor to the Administrator. In support of this request, NBAA expressed concern about insufficient separation of functions if mediators in the Office of Adjudication provide ADR and then subsequently serve as an advisor to the Administrator in the same matter. NBAA further noted that since the Chief Counsel's office reorganized, field attorneys who handle civil penalty cases now report directly to the Assistant Chief Counsel for Enforcement, who is co-located in Washington, DC with the Director of the Office of Adjudication. FAA infers from this comment that NBAA is concerned that their proximity will erode the functional, organizational, and ethical boundaries between litigants, adjudicators, and mediators. NBAA requested that FAA make a similar clarification to the commercial space transportation regulations in 14 CFR part 406.

FAA declines to make the requested clarifications. Both §§ 13.69 and 13.236 already prohibit a mediator from participating in the adjudication of the same case. In addition, these rules do not prevent the parties from using a mediator from a source outside the Office of Adjudication. Regarding NBAA's request to amend the commercial space regulations in 14 CFR parts 400 through 460, this request is outside the scope of this rulemaking, which is limited to 14 CFR part 13. FAA did not make any changes to the final rule in response to this comment.

ACUS Guidance Comment

ACUS noted that the proposed rules provide for the use of mediation and make settlement procedures more flexible for both FAA and opposing parties. While ACUS did not request a specific change to the language in §§ 13.69 and 13.236, it suggested that FAA consider ACUS guidance materials

and model rules on ADR and settlement procedures.

FAA reviewed ACUS's comment and finds that the proposed ADR provisions are consistent with the Administrative Dispute Resolution Act of 1996 and the guidance materials and model rules cited by ACUS. FAA did not change the final rule in response to this comment.

Comment on Superfluity and Choice of Mediator

An individual commenter stated that the dispute resolution provisions in proposed §§ 13.69 and 13.236 are superfluous because DOT already encourages parties to use mediation.[18] The commenter requested that FAA's rule require only neutral, third-party mediators instead of in-house mediators, asserting that in-house mediators may be unfairly biased in favor of the DOT and FAA.

Regarding the individual commenter's statement that the new ADR provisions are superfluous given DOT's ADR policy statement, FAA explained in the NPRM that the proposed ADR provisions complement the DOT policy statement by codifying the use of voluntary mediation in FAA's regulations. FAA believes that this will ensure that parties are aware of their option to use mediation as they consider the overarching enforcement process described in subpart D. Contrary to the commenter's interpretation, these rules, which are adopted as proposed, do not require the use of FAA, DOT, or other government-employee mediators. Rather, the rules provide that the parties may engage the services of any mutually acceptable mediator.

M. Federal Docket Management System and Use of Email for Filing and Service

Current § 13.210 describes where and how to file documents for subpart G matters, as well as how to access documents filed with the Hearing Docket via the internet. It also defines the date of filing. In the NPRM, FAA proposed changes to § 13.210 to update addresses, provide for fax and email filing, and describe the date of filing for each method of filing. FAA also proposed to remove the provision in current paragraph (e) allowing accessibility to all documents in the Hearing Docket through the Federal Docket Management System (FDMS). In the preamble of the NPRM, FAA explained its intention to continue to provide the Administrator's final decisions on appeal, with an index, on its website.

EAA, NBAA, and an individual commenter requested that FAA continue using either FDMS or another electronic system for posting decisions and other filings. EAA and the individual commenter stated that the public should have access to all the materials currently available on FDMS, and its access should not be limited to final decisions available through FAA's website as proposed in the NPRM. The individual commenter also stated, that under the proposed rule, the public would have to subscribe to paid online reporting services for the materials currently available on FDMS, and suggested that this raises due process concerns.

NBAA noted the only reason given for the proposed change is administrative efficiency. NBAA stated the public would be better served by having the final decisions available in the same location as all U.S. Government documents instead of on FAA's website. Both NBAA and EAA stated that FAA's reason for the proposed change—administrative efficiency—does not outweigh the inefficiency and loss of benefit to the public that will result from the proposed change. Lastly, ACUS requested that FAA consider its guidance materials on electronic case management and providing access to adjudicative documents.

FAA's decision to discontinue use of FDMS balances costs and benefits to both FAA and the public associated with the change. Contrary to NBAA's assertion, FDMS is not where all U.S. Government documents are currently stored. Rather, FDMS is a centralized tool created and used mainly for rulemaking and public comments on rulemaking rather than for judicial dockets.

Further, while FDMS is suitable for receiving comments on rulemaking documents, it is different from systems like the Federal judiciary's Public Access to Court Electronic Records (PACER) and Case Management/Electronic Case Filing System (CM/ECF), or the Government Accountability Office's Electronic Protest Docketing System (EPDS). Systems such as CM/ECF and EPDS require parties to ensure private information is not included in documents filed into the case docket. Current § 13.210 requires parties to file documents by sending them to the Hearing Docket Clerk. The Hearing Docket clerk, in turn, must upload the documents to FDMS so that they are publicly accessible pursuant to current § 13.210(e). This places the responsibility on FAA to ensure that it does not release private, proprietary, or otherwise sensitive information in documents made publicly available. As a result, the FAA Hearing Docket clerk must review each filed paper document for sensitive information, create a version of each document that is publicly releasable, and submit the releasable version to FDMS staff for uploading into the system. Thus, using FDMS does not expedite filing; rather, it adds delay due to the time required for processing and creates an administrative burden on FAA.

Moreover, as ACUS recognizes, FAA may not post documents that are prohibited from public release under the Privacy Act, or exempted from release under the Freedom of Information Act (FOIA), meaning that what FAA posts on FDMS is only an incomplete representation of the official, paper docket. FAA can thoroughly review a document for Privacy Act and FOIA issues before releasing it in paper to each specific requester, whereas FDMS makes filings available to anyone who can access the internet.

As explained in the NPRM, the agency is mindful of the public's interest in cost-effective electronic filing and access to materials. Electronic docket systems such as PACER, CM/ECF, and EPDS impose user fees for electronic filing and access to documents. While FAA proposed to eliminate public internet access to the entire docket, the proposed changes do allow for electronic filing through email and fax without charging fees. Additionally, the Office of Adjudication will continue to publish and index Decisions and Orders of the FAA Administrator on its website, also without requiring a fee. Thus, FAA determined that the benefits provided to parties and to FAA outweigh any inefficiencies created by the proposed rule. FAA did not change the final rule in response to this comment.

Comment Urging Mandatory Email Filing

An individual commenter urged FAA to require email filing and email service for all documents in subpart G cases, rather than permitting the parties to choose their method of filing and service with the option of using email.

FAA declines to impose this requirement. By giving parties the choice to file and serve documents by email, rather than requiring it, FAA is permitting more efficient, expeditious, and cost-effective filing and service, without creating an undue hardship on parties lacking access to the internet. FAA did not change the final rule in response to this comment.

[18] DOT Statement of Policy on Alternative Dispute Resolution (67 FR 40367, June 12, 2002).

N. Time for Responding After Service by Mail

Section 13.211(e) currently allows parties in civil penalty proceedings to add five additional days to the prescribed period they have to respond to documents that are served by mail. In the NPRM, FAA proposed eliminating these five additional days to respond after service by mail.

AOPA, EAA, and an individual commenter requested FAA retain the ''five-day mailing rule'' by preserving the additional time provided in current § 13.211(e) to respond to documents served by mail. AOPA stated the five additional days adequately compensates for possible delays involved with service by mail. AOPA suggested that requiring a party to seek an extension of time if needed, as FAA explained in the NPRM, is less efficient and creates additional workload.

FAA agrees with the comments on the five-day mailing rule. This final rule restores the additional time provision to subpart G in § 13.211(g) and adds it to subpart D in § 13.45(b) to maintain consistency between both subparts. The final rule also updates the paragraph designation in § 13.45 to reflect the addition of the five-day mailing rule.

O. Valid Service of Documents

Section 13.211(g) currently defines ''valid service'' of documents in civil penalty proceedings. Current § 13.211(h) provides what constitutes a ''presumption of service.'' FAA proposed revising the provision on valid service and moving it from § 13.211(g) to § 13.211(f), as well as removing the presumption of service provisions in paragraph (h) as duplicative of the instructions for valid service.

EAA requested that FAA retain the presumption of service provision in current § 13.211(h). EAA asserted that the language deeming service valid in proposed paragraph (f) is significantly different from the current presumption of service language, which requires an acknowledgement of receipt. In addition, EAA asserted that FAA's proposed changes conflict with notions of due process and fairness, the PBR, and the intent of Fed. R. Civ. P. 4.

FAA agrees with the comments that the language deeming service valid in proposed paragraph (f) is significantly different from the current presumption of service language, which requires an acknowledgement of receipt. This final rule restores the provision defining ''presumption of service'' to § 13.211(h).

P. Disqualification/Recusal

Sections 13.39, 13.205(c), and 13.218(f)(6) address the disqualification and recusal of administrative adjudicators under their respective subparts. In the NPRM, FAA did not propose any changes to these regulations.

ACUS requested that FAA consider ACUS's guidance and its model rule on ALJ/hearing officer recusal. In support, ACUS stated that recusal is important for maintaining the integrity of an adjudication, protects the parties, and promotes public confidence in agency adjudication.

In light of the recommendations on Recusal Rules for Administrative Adjudicators (84 FR 2139, Feb. 6, 2019) cited in ACUS's comment, the agency notes that subpart D does not have procedural recusal provisions akin to those in § 13.205. As a result, FAA has amended this final rule by adding language to § 13.39 and proposed § 13.218(f)(6) to address motions for disqualification consistent with ACUS's guidance and model rule. This amendment, however, does not include a provision for interlocutory appeal of a disqualification decision, because subpart D (unlike subpart G) does not currently provide for interlocutory appeals. Rather, a party may appeal a disqualification decision under the general appeal provisions in proposed §§ 13.65 and 13.67(b). FAA has not amended the subpart G disqualification provisions in proposed § 13.205(c), as the proposed language provides more detail than the guidance and model rule cited by the commenter.

Q. Motion for a More Definite Statement

Current § 13.218(f)(3) describes how to file a motion for a more definite statement, whether by the complainant or respondent. In the NPRM, FAA proposed only grammatical and stylistic changes to § 13.218(f)(3).

AOPA and an individual commenter requested that FAA amend § 13.218(f)(3)(i) and (ii) to make them consistent with regard to the consequences of a party's failure to supply a more definite statement. Both AOPA and the individual commenter noted a discrepancy between proposed § 13.218(f)(3)(i) and proposed § 13.218(f)(3)(ii) in how an ALJ would handle a motion for a more definite statement depending on whether it is made by the complainant (FAA) or respondent. Proposed rule § 13.218(f)(3)(i) provides that if the complainant fails to provide a more definite statement, the ALJ ''may'' strike the offending statement. Proposed § 13.218(f)(3)(ii), however, states that if the respondent fails to provide a more definite statement, the ALJ ''must'' strike the offending statement. AOPA noted that the current regulations provide that the ALJ ''shall'' strike the offending statement regardless of which party failed to comply. AOPA requested that both provisions provide that the ALJ ''may'' strike the offending statement.

FAA has changed the final rule in response to this comment. FAA intended for both provisions to be changed from ''shall'' to ''may'' and has revised § 13.218(f)(3)(ii) to correct the typographical error in the NPRM.

R. Technological Advances in All Adjudications and Proceedings

ACUS requested that FAA consider ACUS's guidance and model rules for incorporating technology advances into discovery, case management, and hearings.

FAA has considered ACUS's guidance and model rules. However, the requested changes, including recommendations to add video hearings and use complex case management systems, go beyond the scope of this rulemaking. The rules do not prevent the use of advanced technology in managing a case. Video systems for hearings, for example, might be appropriate on a case-by-case basis or for a class of cases. If necessary, these matters can be addressed by standing orders issued under subpart D or specific orders of an ALJ or hearing officer. FAA did not change the final rule in response to this comment.

S. Other Differences Between the NPRM and the Final Rule

The final rule contains the following additional changes to correct style, format, inconsistencies, and typographical errors, including:

- Changing the verb tense in § 13.3(b) to provide that the Administrator ''has delegated'' certain authority, rather than ''may delegate'' authority, to more closely reflect the verb tense in the current rule.
- Reformatting § 13.3(c) to enumerate the list of delegated authority from the Administrator in separate paragraphs as § 13.3(c)(1) through (4), and adding a delegation for petitioning a court of the United States to enforce a subpoena or order as § 13.3(c)(5). FAA intended the proposed list of delegated authority in the NPRM to mirror the authority provided by the statutes cited in current § 13.3(b), which include the authority to petition a court of the United States to enforce a subpoena or order.
- Inserting ''formal'' to modify ''investigations'' in § 13.3(c)(2) as the Agency did not intend for this final rule to change the nature or scope of the existing delegations in § 13.3.

• Replacing the term ''subparagraph'' in § 13.15(c)(3) with ''paragraph'' for consistency with the organizational structure used in the Code of Federal Regulations.[19]

• Removing ''under 49 U.S.C. 46103'' from § 13.16(g) as the reference is unnecessary, and to make the service provisions in § 13.16(f) and (g) align.

• Changing § 13.17(a) from passive voice to active voice for readability.

• Adding the Chief Counsel to the delegation of authority in § 13.18(c) as provided in current § 13.18(c), as the omission was unintentional.

• Removing citation to 49 U.S.C. 46301(g) in § 13.18(h), as it does not apply to cases covered by § 13.18 and is not cited in current § 13.18(h).

• Adding a ''will'' to § 13.19(b)(1) to make clear that the notice issuance is mandatory.

• Replacing ''determination of an emergency'' with ''determination that safety in air transportation or air commerce requires the immediate effectiveness of an order'' in § 13.19(d) to conform to the language in the applicable statutory provisions.

• Adding headings to §§ 13.16(a) and (b), 13.20(a) and (b), 13.43(c)(3), 13.53(a), and 13.57(a) through (c) per **Federal Register** styling requirements.

• Correcting the cross-reference to subpart D in § 13.35(a).

• Replacing the reference to ''an order'' in § 13.63(a) with ''the hearing officer's decision'' and reformatting § 13.63(a) into § 13.63(a)(1), (2), and (3).

• Removing the cross-reference to ''§ 13.25'' in § 13.67(c) because 14 CFR 13.25 was removed.

• Removing the extraneous qualifier ''of this part'' from cross-references in §§ 13.101, 13.201, and 13.202.

• Removing the ''(a)'' paragraph level in § 13.201, as there is only one paragraph in that section.

• Streamlining the heading in § 13.205(b) by changing it from ''Limitations on the power of the administrative law judge'' to ''Limitations.''

• Removed ''on or after August 2, 1990, and'' from § 13.208(d) as it is no longer necessary.

• Replacing ''Portable Document Format'' with ''PDF'' in § 13.210(h).

• Adding the implied ''Not later than'' to § 13.228(a)(1) and (2), for grammatical completeness.

• Removing ''unless otherwise agreed by the parties'' in § 13.233(c) and (e), as duplicative of the exceptions stated in § 13.233(c)(1) and (2) and (e)(1) and (2). Removing the duplicative ''may'' from § 13.233(j).

[19] See 1 CFR 21.11.

• Updating §§ 13.16(g)(2), 13.17(e)(2), 13.18(a)(2), 13.19(b) introductory text and (b)(1), 13.45(a), 13.47, 13.49(a)(1) and (e), 13.57(b), 13.61, 13.65(d)(1) and (e)(1)(vii), 13.69(a), 13.75(b), 13.101(b), 13.123(b), 13.127, 13.207, 13.208(d)(3), 13.213(a), 13.217(f)(1), 13.218(f), 13.219(d), 13.220(i)(2), (k), (l)(1), and (n), 13.221, 13.222(a) and (b), 13.223, 13.232(a), 13.233(d)(1), (h), (j) introductory text, and (j)(1), 13.234(a), 13.235(d), and 13.236 to correct typographical errors, improve readability, and for stylistic consistency.

T. Redesignation Table

Current section	New section
Subpart A:	
N/A	§ 13.1.
§ 13.1	§ 13.2.
§ 13.3	§ 13.3.
§ 13.5(a)	§ 13.5(a).
§ 13.5(b)	§ 13.5(b).
§ 13.5(c)	§ 13.5(c).
§ 13.5(d)	§ 13.5(d).
§ 13.5(e)	Removed.
§ 13.5(f)	§ 13.5(e).
§ 13.5(g)	§ 13.5(f).
§ 13.5(h)	§ 13.5(f)(1).
§ 13.5(i)	§ 13.5(f)(2).
§ 13.5(j)	§ 13.5(g).
§ 13.5(k)	§ 13.5(h).
§ 13.7	§ 13.7.
Subpart B:	
§ 13.11	§ 13.11.
Subpart C:	
§ 13.13(a)	§ 13.13(a).
§ 13.13(b)	§ 13.13(b).
§ 13.13(c)	§ 13.13(b)(5).
§ 13.14	Removed.
§ 13.15(a)	§ 13.15(a).
§ 13.15(b)	§ 13.15(b).
§ 13.15(c)(1)	§ 13.15(c)(1).
§ 13.15(c)(2)	§ 13.15(c)(2)(ii), (c)(3), (c)(4).
§ 13.15(c)(3)	§ 13.15(c)(2)(i).
§ 13.15(c)(4)	§ 13.15(c)(2)(i).
§ 13.15(c)(5)	§ 13.15(c)(5).
§ 13.16(a)–(c)	§ 13.16(a)–(c).
§ 13.16(d)	§ 13.16(e).
§ 13.16(e)	§ 13.16(d).
§ 13.16(f)–(j)	§ 13.16(f)–(j).
§ 13.16(k)	§ 13.15(l).
§ 13.16(l)	§ 13.15(m).
§ 13.16(m)	§ 13.15(k).
§ 13.16(n)	§ 13.16(n).
§ 13.17	§ 13.17.
§ 13.18	§ 13.18.
§ 13.19(a)–(b)	§ 13.19(a).
§ 13.19(c)	§ 13.19(b).
§ 13.19(d)	Removed.
N/A	§ 13.19(c).
N/A	§ 13.19(d).
§ 13.20(a)	§ 13.20(a).
§ 13.20(b)	§ 13.20(b).
§ 13.20(c)	§ 13.20(c)(1).
§ 13.20(d)	§ 13.20(c)(2).
§ 13.20(e)	§ 13.20(c)(4).
§ 13.20(f)	§§ 13.20(c)(3), 13.63(b).
§ 13.20(g)	§ 13.65(a).
§ 13.20(h)	§ 13.65(b).
§ 13.20(i)	§ 13.65(c).
§ 13.20(j)	§ 13.65(d).
§ 13.20(k)	§ 13.45(c).
§ 13.20(l)	§ 13.20(f).
§ 13.20(m)	Removed.
N/A	§ 13.20(e).
§ 13.21	Removed.
§ 13.23	Removed.
§ 13.25	Removed.
§ 13.27	Removed.
§ 13.29	Removed.
Subpart D:	
§ 13.31	§ 13.31.
§ 13.33	§ 13.33(b).
N/A	§ 13.33(a), (c).
§ 13.35(a)	§ 13.35(a), § 13.43(c).
§ 13.35(b)	§ 13.35(a).
§ 13.35(c)	§ 13.35(c).
§ 13.35(d)	§ 13.35(b).
§ 13.37(a)–(j)	§ 13.37(a)–(j).
N/A	§ 13.37(k).
§ 13.37(k)	§ 13.37(l).
N/A	§ 13.37(m).
§ 13.39	§ 13.39.
N/A	§ 13.41.
§ 13.43(a)	§ 13.43(a).
N/A	§ 13.43(b)–(d), (e).
§ 13.43(b)	§ 13.43(f).
§ 13.43(c)	§ 13.43(g).
§ 13.43(d)	§ 13.43(h).
§ 13.43(e)	§ 13.43(h).
§ 13.44	§ 13.45(a).
N/A	§ 13.45(b).
§ 13.44(b)	§ 13.45(c), (d).
§ 13.45	§ 13.47(b).
§ 13.47	§ 13.47(a).
§ 13.49(a)	§ 13.49(a)(1).
N/A	§ 13.49(b).
§ 13.49(c)	§ 13.49(a)(2).
§ 13.49(d)	§ 13.49(c).
§ 13.49(e)	§ 13.49(d).
§ 13.49(f)	§ 13.49(e).
§ 13.49(g)	Removed.
N/A	§ 13.49(g).
§ 13.49(h)	§ 13.49(h).
§ 13.51	§ 13.51.
§ 13.53	§ 13.53(d).
N/A	§ 13.53(a)–(c), (e).
§ 13.55	§ 13.55.
§ 13.57(a)	§ 13.57(a).
§ 13.57(b)	§ 13.57(b).
§ 13.57(c)	§ 13.57(c).
§ 13.57(d)	Removed.
N/A	§ 13.57(d).
N/A	§ 13.57(e).
N/A	§ 13.57(f).
§ 13.59(a)	§ 13.59(a).
§ 13.59(b)	§ 13.59(b).
§ 13.59(c)	§ 13.49(f).
§ 13.61	§ 13.61.
§ 13.63	§ 13.63(a).
N/A	§ 13.63(b)–(c).
N/A	§ 13.65.
N/A	§ 13.67.
N/A	§ 13.69.
Subpart E:	
§ 13.71	§ 13.71.
§ 13.73	§ 13.73.
§ 13.75	§ 13.75.
§ 13.77	§ 13.77.
§ 13.79	§ 13.63(b).
§ 13.81(a)	§ 13.81(a).
§ 13.81(b)	Removed.
§ 13.81(c)	§ 13.81(b).
§ 13.81(d)	§ 13.81(c).
§ 13.81(e)–(g)	Removed.
§ 13.83(a)	§ 13.65(a).
§ 13.83(b)	Removed.
§ 13.83(c)	Removed.
§ 13.83(d)	§ 13.65(b).
§ 13.83(e)	§ 13.65(c).
§ 13.83(f)	Removed.
§ 13.83(g)	§ 13.65(d).
§ 13.83(h)	Removed.
§ 13.85	Removed.
§ 13.87	§ 13.45(b)–(c).
Subpart F:	
§ 13.101	§ 13.101.
§ 13.103	§ 13.103.
§ 13.105	§ 13.105.
§ 13.107	§ 13.107.
§ 13.109	§ 13.109.
§ 13.111	§ 13.111.

Current section	New section
§ 13.113	§ 13.113.
§ 13.115	§ 13.115.
§ 13.117	§ 13.117.
§ 13.119	§ 13.119.
§ 13.121	§ 13.121.
§ 13.123	§ 13.123.
§ 13.125	§ 13.125.
§ 13.127	§ 13.127.
§ 13.129	§ 13.129.
§ 13.131	§ 13.131.
Subpart G:	
§ 13.201	§ 13.201.
§ 13.202	§ 13.202.
§ 13.203	§ 13.203.
§ 13.204	§ 13.204.
§ 13.205(a)(1)–(9)	§ 13.205(a)(1)–(9).
§ 13.205(b)	§ 13.205(a)(10), (b).
N/A	§ 13.205(a)(11).
§ 13.205(c)	§ 13.205(c).
§ 13.206	§ 13.206.
§ 13.207	§ 13.207.
§ 13.208	§ 13.208.
§ 13.209(a)	§ 13.209(a).
§ 13.209(b)	§ 13.209(a)–(b), (d), § 13.210.
§ 13.209(c)	§ 13.209(c).
§ 13.209(d)	§ 13.209(d).
§ 13.209(e)	§ 13.209(e).
§ 13.209(f)	§ 13.209(f).
§ 13.210(a)	§ 13.210(a), (b), (c), (g).
§ 13.210(b)	§ 13.210(d).
§ 13.210(c)	§ 13.210(e).
§ 13.210(d)	§ 13.210(f).
§ 13.210(e)	Removed.
N/A	§ 13.210(h).
§ 13.211(a)	§ 13.211(a).
§ 13.211(b)	§ 13.211(c).
§ 13.211(c)	§ 13.211(d).
§ 13.211(d)	§ 13.211(e).
§ 13.211(e)	§ 13.211(g).
§ 13.211(f)	§ 13.211(b).
§ 13.211(g)	§ 13.211(f).
§ 13.211(h)	§ 13.211(h).
§ 13.212	§ 13.212.
§ 13.213	§ 13.213.
§ 13.214	§ 13.214.
§ 13.215	§ 13.215.
§ 13.216	§ 13.216.
§ 13.217	§ 13.217.
§ 13.218	§ 13.218.
N/A	§ 13.218(f)(7).
§ 13.219	§ 13.219.
§ 13.220	§ 13.220.
§ 13.221	§ 13.221.
§ 13.222	§ 13.222.
§ 13.223	§ 13.223.
§ 13.224	§ 13.224.
§ 13.225	§ 13.225.
§ 13.226	§ 13.226.
§ 13.227	§ 13.227.
§ 13.228	§ 13.228.
§ 13.229	§ 13.229.
§ 13.230	§ 13.230.
§ 13.231	§ 13.231.
§ 13.232(a)	§ 13.232(a).
§ 13.232(b)	§ 13.232(b).
§ 13.232(c)	§ 13.232(c).
§ 13.232(d)	§ 13.232(e).
N/A	§ 13.232(d).
§ 13.233	§ 13.233.
§ 13.234	§ 13.234.
§ 13.235	§ 13.235.
N/A	§ 13.236.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995).

FAA has determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures. This final rule will not result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. It will not cause a serious inconsistency or otherwise interfere with an action taken or planned by another agency, as this project only concerns FAA. It would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, as it does not impact on any of these things. It would not raise novel legal issues, as the amendments it makes are based on established law and precedent. Finally, this final rule complies with DOT's Regulatory Policies and Procedures.

A. Regulatory Evaluation

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule. This rule amends FAA's investigative and enforcement procedures to update position title references and reflect organizational changes in the Office of the Chief Counsel, updates outdated statutory and regulatory references, updates outdated addresses, and provides uniformity across part 13. The rule also reorganizes and rewords existing provisions to eliminate inconsistencies, clarify ambiguity, increase efficiency, and improve readability. These changes will ensure that the public has current information and rule language that is easier to understand. The cost of these changes is minimal.

This final rule also provides the option for an expedited administrative process to subjects of emergency orders to which § 13.20 applies. Currently, part 13 does not provide for an expedited administrative process for the subjects of such orders. The only recourse for litigating such an order is a direct appeal under 49 U.S.C. 46110 to a U.S. court of appeals, which can be costly and slow. This final rule adds the option of an expedited administrative hearing before a hearing officer followed by an expedited administrative appeal to the Administrator. The expedited process is consistent with existing processes for issuing other types of emergency orders and notices of proposed actions. Also, expedited subpart D proceedings are not new, as current subpart E uses subpart D procedures for appeals of hazardous materials emergency orders of compliance issued under current § 13.81(a). Because the new expedited procedures process is similar to existing processes, the costs stemming from the new process will be minimal. Finally, parties could appeal an order issued after exhaustion of the expedited administrative process to a U.S. court of appeals under 49 U.S.C. 46110.

The expedited administrative process may also lead to an efficient resolution of the matter without an appeal to a U.S. court of appeals. This could result in avoided initial filing fees. An appeal to a U.S. court of appeals requires an initial $500 filing fee [20] versus no initial filing fee in the expedited administrative process. Expedited administrative proceedings could reduce time and costs for affected parties compared to an appeal to a U.S. court of appeals. Potential cost savings might result because of net savings in attorneys' fees, *i.e.,* the difference in cost of hiring an attorney for a potentially lengthy U.S. court of appeals case versus the expedited administrative process. In addition, the expedited administrative process could resolve the matter in a far shorter time than a U.S. court of appeals, as the Administrator must issue the final order in the expedited administrative process within 80 days. U.S. court of appeals cases, on the other hand, could result in protracted litigation costs. Additionally,

[20] *https://www.uscourts.gov/services-forms/fees/court-appeals-miscellaneous-fee-schedule.*

a direct appeal to a U.S. court of appeals could require a remand to the agency for it to consider matters that otherwise could have been resolved under the expedited administrative process. After exhaustion of the expedited administrative process, a respondent could still appeal to a U.S. court of appeals. Even if a respondent resorts to judicial review first, the court of appeals has discretion to require further administrative proceedings, if, for example, the court believes doing so would help develop the record in the case. Therefore, even if the case is not resolved by the expedited administrative process, the U.S. court of appeals could use records developed during that process, reducing the potential costs of a judicial appeal.

As FAA does not know how many persons subject to emergency orders would opt for expedited hearings, and of these how many would end up before a U.S. court of appeals, FAA cannot conclude how many persons would potentially receive cost savings. However, FAA expects small cost savings because emergency orders issued under § 13.20 are infrequent.

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

As with the option for an expedited hearing, mediation may not fully resolve a matter and the respondent may still choose to litigate. However, mediation may reduce the cost of litigation because it can narrow issues and provide for greater cooperation during discovery. FAA does not know how many parties would participate in a mediation process. The annual average number of subpart D and G cases received by the FAA Hearing Docket from 2015 through 2019 was 41. FAA estimates that the average annual number of parties opting for mediation would likely not exceed this number. As FAA expects the cost savings of opting for mediation will be minimal, FAA concludes that the total cost savings of providing this option will be minimal.

This final rule also adds the less burdensome options of serving and filing a single copy of a document in subpart D and G proceedings by email or fax. This has the potential of minimal cost savings. Currently, the parties must file by mail or personally deliver an original and a copy of each document, and serve a copy on each party. Service by these methods imposes costs not applicable to emailing or faxing, like postage, copying, and delivery fees.

This final rule also removes the FAA Hearing Docket Clerk's authority in civil penalty cases under subpart G to issue blank subpoenas upon request by a party, and instead requires a party applying for a subpoena to show the general relevance and reasonable scope of the evidence sought by the subpoena. Under this final rule, only the ALJ will have the authority to issue a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought by the subpoena. The burden is on the party requesting the subpoena to prove it is appropriate. Because this change could avoid subpoenas that impose irrelevant and burdensome requests for testimony, documents, and tangible things, it is potentially cost saving.

Finally, current § 13.210(e)(1) explains that materials filed in FAA's Hearing Docket in civil penalty adjudications are made publicly available on the FDMS website, *www.regulations.gov.* FAA is discontinuing use of the FDMS website for such materials, but will continue to make Administrator final decisions available on FAA's website. Based on current billing, this rule will save FAA approximately $50,000 per year from discontinuing the use of the FDMS website for part 13 adjudication docket materials.[21] Over a 10-year period of analysis this cost savings would total about $500,000 or about $351,179 present value at a 7% discount rate.

FAA concludes that this rule will result in small cost savings as explained herein.

B. Regulatory Flexibility Determination

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

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

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule is likely to affect a substantial number of small entities, but as it will provide small cost savings it is not expected to have a significant economic impact on a substantial number of small entities.

This final rule codifies current practice, and rewrites and reorganizes a part of the CFR to make it more understandable. It updates outdated references and addresses. It adds less burdensome and faster-moving administrative appeal options. It also adds less burdensome options for serving and filing papers. It may eliminate some requests for subpoenas that otherwise would cost parties or subpoenaed persons time and money to defend against. FAA has determined this final rule will result in small cost savings.

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

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a

[21] Savings based on the portion of FAA's total annual billing costs for dockets and FDMS services attributable to adjudication materials.

legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FAA has assessed the potential effect of this final rule and determined that it would impose the same small cost savings on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(3)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

In the proposed rule, FAA identified one provision with Paperwork Reduction Act (PRA) implications that will require a new OMB control number: § 13.5. FAA did not receive any comments regarding its proposed revision to the information collection in § 13.5. However, as FAA was developing this final rule, it realized that it had not provided the notice required by 5 CFR part 1320. Accordingly, on August 4, 2020, the FAA published its 60-day PRA notice, 85 FR 47288. FAA received no comments in response to the notice. The FAA received OMB Control No. 2120–0795 for the information collection in § 13.5. The FAA will be publishing the final 30-day PRA notice requesting public comment. FAA notes that the provision of this final rule that requires information collection request approval will be effective upon OMB approval.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

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

V. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

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

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

D. Executive Order 13892, Promoting the Rule of Law Through Transparency and Fairness

Executive Order 13892, Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication, promotes transparency to the regulated community when agencies conduct enforcement actions and adjudications. FAA has analyzed this action and determined it incorporates the policy and principles articulated in the Executive order.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—

1. Search the Federal eRulemaking Portal (*www.regulations.gov*);
2. Visit FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/;* or
3. Access the Government Printing Office's web page at *www.GovInfo.gov*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT**

heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 13

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

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 is revised to read as follows:

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

■ 2. Revise subpart A to read as follows:

Subpart A—General Authority to Re-Delegate and Investigative Procedures

Sec.
13.1 Re-delegation.
13.2 Reports of violations.
13.3 Investigations (general).
13.5 Formal complaints.
13.7 Records, documents, and reports.

§ 13.1 Re-delegation.

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

§ 13.2 Reports of violations.

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

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

§ 13.3 Investigations (general).

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

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

(c) The Administrator delegates to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement the authority to:

(1) Issue orders;

(2) Conduct formal investigations;

(3) Subpoena witnesses and records in conducting a hearing or investigation;

(4) Order depositions and production of records in a proceeding or investigation; and

(5) Petition a court of the United States to enforce a subpoena or order described in paragraphs (c)(3) and (4) of this section.

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

§ 13.5 Formal complaints.

(a) Any person may file a complaint with the Administrator with respect to a violation by a person of any requirement under 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes, 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 seeking an appropriate order or other enforcement action;

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

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

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

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

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

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

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

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

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

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

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

(g) If the investigation substantiates the allegations set forth in the complaint, the Administrator may take action in accordance with applicable law and FAA policy.

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

§ 13.7 Records, documents, and reports.

Each record, document, and report that FAA regulations require to be maintained, exhibited, or submitted to the Administrator may be used in any

investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section which imposes the requirement, the records, documents, and reports may be used in any civil penalty action, certificate action, or other legal proceeding.

■ 3. Revise subpart B to read as follows:

Subpart B—Administrative Actions

§ 13.11 Administrative disposition of certain violations.

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

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

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

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

■ 4. Revise subpart C to read as follows:

Subpart C—Legal Enforcement Actions

Sec.

13.13 Consent orders.
13.14 [Reserved]
13.15 Civil penalties: Other than by administrative assessment.
13.16 Civil penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman; administrative assessment against all persons for hazardous materials violations.
13.17 Seizure of aircraft.
13.18 Civil penalties: Administrative assessment against an individual acting as a pilot, flight engineer, mechanic, or repairman.
13.19 Certificate actions appealable to the National Transportation Safety Board.
13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.
13.21 through 13.29 [Reserved]

§ 13.13 Consent orders.

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

(b) A person that may be subject to legal enforcement action may propose a consent order. The proposed consent order must include—

(1) An admission of all jurisdictional facts;

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

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

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

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

§ 13.14 [Reserved]

§ 13.15 Civil penalties: Other than by administrative assessment.

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

(b) The authority of the Administrator to seek a civil penalty, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions sought by the Administrator is delegated to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement. This delegation applies to cases involving one or more of the following:

(1) An amount in controversy in excess of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) *General.* The FAA uses the procedures in this section when it assesses a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman for a violation cited in the first sentence of 49 U.S.C. 46301(d)(2), or in 49 U.S.C. 47531, or any

implementing rule, regulation, or order, except when the U.S. district courts have exclusive jurisdiction.

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

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

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

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

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

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

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

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

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

(3) Other matters that justice requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) *Payment.* (1) A person must pay a civil penalty by:

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

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

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

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

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

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

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

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

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

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

§ 13.17 Seizure of aircraft.

(a) The Chief Counsel, or a Regional Administrator for an aircraft within the region, may issue an order authorizing a State or Federal law enforcement officer or a Federal Aviation Administration safety inspector to seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or the individual commanding the aircraft.

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

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

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

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

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

(4) Amount that may be tendered as—

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

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

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

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

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

(2) The aircraft is seized under an order of a court of the United States in proceedings in rem initiated under 49 U.S.C. 46305 to enforce a lien against the aircraft;

(3) The United States Attorney General, or the delegate of the Attorney General, notifies the FAA that the United States Attorney General, or the delegate of the Attorney General, refuses to institute proceedings in rem under 49 U.S.C. 46305 to enforce a lien against the aircraft; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

penalty, or the amount of the penalty, is not warranted by the circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The civil penalty must be paid within 30 days after service of the order of assessment, unless an appeal is filed with the National Transportation Safety Board. In cases where an appeal is filed with the National Transportation Safety Board, or a petition for review is filed with a U.S. court of appeals, the civil penalty must be paid within 30 days after all litigation in the matter is completed and the civil penalty is affirmed in whole or in part.

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

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

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

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

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

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

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

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

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

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

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

(d) A person may not petition the National Transportation Safety Board for a review of the Administrator's determination that safety in air transportation or air commerce requires the immediate effectiveness of an order where the action is based on the circumstances described in paragraph (d)(1), (2), or (3) of this section.

(1) The revocation of an individual's airman certificates for the reasons stated

in paragraph (d)(1)(i) or (ii) of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Orders of compliance;

(2) Cease and desist orders;

(3) Orders of denial;

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

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

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

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

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

(i) Submit a written reply;

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

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

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

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

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

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

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

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

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

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

(ii) A notice of proposed action that:

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

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

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

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

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

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

(4) The filing of a request for hearing under subpart D of this part does not stay the effectiveness of the 80-day

immediately effective order issued under this section.

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

§§ 13.21 through 13.29 [Reserved]

■ 5. Revise subpart D to read as follows:

Subpart D—Rules of Practice for FAA Hearings

Sec.

13.31 Applicability.
13.33 Parties, representatives, and notice of appearance.
13.35 Request for hearing, complaint, and answer.
13.37 Hearing officer: Assignment and powers.
13.39 Disqualification of hearing officer.
13.41 Separation of functions and prohibition on ex parte communications.
13.43 Service and filing of pleadings, motions, and documents.
13.44 [Reserved]
13.45 Computation of time and extension of time.
13.47 Withdrawal or amendment of the complaint, answer, or other filings.
13.49 Motions.
13.51 Intervention.
13.53 Discovery.
13.55 Notice of hearing.
13.57 Subpoenas and witness fees.
13.59 Evidence.
13.61 Argument and submittals.
13.63 Record, decision, and aircraft registration proceedings.
13.65 Appeal to the Administrator, reconsideration, and judicial review.
13.67 Procedures for expedited proceedings.
13.69 Other matters: Alternative dispute resolution, standing orders, and forms.

§ 13.31 Applicability.

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

§ 13.33 Parties, representatives, and notice of appearance.

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

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

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

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

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

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

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

§ 13.35 Request for hearing, complaint, and answer.

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

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

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

§ 13.37 Hearing officer: Assignment and powers.

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

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

(b) Administer oaths and affirmations;

(c) Examine witnesses;

(d) Adopt procedures for the submission of evidence in written form;

(e) Issue subpoenas;

(f) Rule on offers of proof;

(g) Receive evidence;

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

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

(j) Dispose of procedural requests and similar matters;

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

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

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

§ 13.39 Disqualification of hearing officer.

(a) *Motion and supporting affidavit.* Any party may file a motion for disqualification under § 13.49(g). A party must state the grounds for disqualification, including, but not limited to, a financial or other personal interest that would be affected by the outcome of the enforcement action, personal animus against a party to the action or against a group to which a party belongs, prejudgment of the adjudicative facts at issue in the proceeding, or any other prohibited conflict of interest. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(b) *Timing.* A motion for disqualification must be filed prior to the issuance of the hearing officer's decision under § 13.63(b). Any party may file a response to a motion for disqualification, but must do so no later than 5 days after service of the motion for disqualification.

(c) *Decision on motion for disqualification.* The hearing officer must render a decision on the motion for disqualification no later than 15 days after the motion has been filed. If the hearing officer finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the hearing officer must withdraw from the proceedings immediately. If the hearing officer finds that disqualification is not warranted, the hearing officer must deny the motion and state the grounds for the denial on the record. If the hearing officer fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

(d) *Self-disqualification.* A hearing officer may disqualify himself or herself at any time.

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

(a) *Separation of powers.* The hearing officer independently exercises the powers under this subpart in a manner conducive to justice and the proper dispatch of business. The hearing officer

must not participate in any appeal to the Administrator.

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

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

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

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

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

(b) *Methods of filing.* Filing must be by email, personal delivery, expedited or overnight courier express service, mail, or fax.

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

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

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

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

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

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

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

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

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

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

§ 13.44 [Reserved]

§ 13.45 Computation of time and extension of time.

(a) In computing any period of time prescribed or allowed by this subpart, the date of the act, event, default, notice, or order is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a Federal holiday.

(b) Whenever a party must respond within a prescribed period after service by mail, 5 days are added to the prescribed period.

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

(1) The Director of the Office of Adjudication prior to the designation of a hearing officer;

(2) The hearing officer prior to the filing of a notice of appeal; or

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

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

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

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

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

§ 13.49 Motions.

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

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

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

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

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

(d) *Motion to strike.* Upon motion of either party, the hearing officer may order stricken, from any pleadings, any insufficient allegation or defense, or any

redundant, immaterial, impertinent, or scandalous matter.

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

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

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

(f) *Motion for protective order.* The hearing officer may order information contained in anything filed, or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the hearing officer, disclosure would be detrimental to aviation safety; disclosure would not be in the public interest; or the information is not otherwise required to be made available to the public. Any person may make written objection to the public disclosure of any information, stating the ground for such objection.

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

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

§ 13.51 Intervention.

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

§ 13.53 Discovery.

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

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

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

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

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

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

(1) The discovery requested is cumulative or repetitious;

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

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

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

§ 13.55 Notice of hearing.

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

§ 13.57 Subpoenas and witness fees.

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

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

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

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

(c) *Fees.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and allowances as provided for under 28 U.S.C. 1821. The party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees and allowances described in this section.

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

(e) *Motion to quash or modify the subpoena.* A party, or any person served with a subpoena, may file a motion to quash or modify the subpoena with the hearing officer at or before the time specified in the subpoena for compliance. The movant must describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible thing is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the hearing officer on the motion.

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

§ 13.59 Evidence.

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

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

§ 13.61 Argument and submittals.

The hearing officer must give the parties adequate opportunity to present arguments in support of motions,

objections, and the final order. The hearing officer may determine whether arguments are to be oral or written. At the end of the hearing, the hearing officer may allow each party to submit written proposed findings and conclusions and supporting reasons for them.

§ 13.63 Record, decision, and aircraft registration proceedings.

(a) *The record.* (1) The testimony and exhibits admitted at a hearing, together with all papers, requests, and rulings filed in the proceedings, are the exclusive basis for the issuance of the hearing officer's decision.

(2) On appeal to the Administrator, the record shall include all of the information identified in paragraph (a)(1) of this section and evidence proffered but not admitted at the hearing.

(3) Any party may obtain a transcript of the hearing from the official reporter upon payment of the required fees.

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

(c) *Certain aircraft registration proceedings.* If the hearing officer determines that an aircraft is ineligible for a certificate of aircraft registration in proceedings relating to aircraft registration orders suspending or revoking a certificate of registration under § 13.20, the hearing officer may suspend or revoke the aircraft registration certificate.

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

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

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

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

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

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

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

(3) The hearing officer committed any prejudicial error.

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

(1) The Director has the authority to:

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

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

(iii) Grant or deny motions to dismiss appeals;

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

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

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

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

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

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

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

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

§ 13.67 Procedures for expedited proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

■ 6. Revise subpart E to read as follows:

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

Sec.

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

§ 13.71 Applicability.

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

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

§ 13.73 Notice of proposed order of compliance.

The Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement may issue to an alleged violator a notice of proposed order of compliance advising the alleged violator of the charges and setting forth the remedial action sought in the form of a proposed order of compliance.

§ 13.75 Reply or request for hearing.

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

(1) Submit a written reply;

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

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

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

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

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

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

§ 13.77 Consent order of compliance.

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

(b) The alleged violator may submit a proposed consent order to an agency attorney. The proposed consent order must include—

(1) An admission of all jurisdictional facts;

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

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

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

(5) If a request for hearing is pending in any forum, a provision that the alleged violator will withdraw the request for a hearing and request that the case be dismissed.

§ 13.79 [Reserved]

§ 13.81 Emergency orders.

(a) Notwithstanding §§ 13.73 through 13.77, the Chief Counsel, each Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement may issue an emergency order of compliance, which is effective upon issuance, in accordance with the procedures in subpart C of 49 CFR part 109, if the person who issues the order finds that there is an ''imminent hazard'' as defined in 49 CFR 109.1.

(b) The FAA official who issued the emergency order of compliance may rescind or suspend the order if the criteria set forth in paragraph (a) of this section are no longer satisfied, and, when appropriate, may issue a notice of proposed order of compliance under § 13.73.

(c) If at any time in the course of a proceeding commenced in accordance with § 13.73 the criteria set forth in paragraph (a) of this section are satisfied, the official who issued the notice may issue an emergency order of compliance, even if the period for filing a reply or requesting a hearing specified in § 13.75 has not expired.

§§ 13.83 through 13.87 [Reserved]

■ 7. Revise subpart F to read as follows:

Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation

Sec.

13.101 Applicability.
13.103 Order of investigation.
13.105 Notification.
13.107 Designation of additional parties.
13.109 Convening the investigation.
13.111 Subpoenas.
13.113 Noncompliance with the investigative process.
13.115 Public proceedings.
13.117 Conduct of investigative proceeding or deposition.

13.119 Immunity and orders requiring testimony or other information.
13.121 Witness fees.
13.123 Submission by party to the investigation.
13.125 Depositions.
13.127 Reports, decisions, and orders.
13.129 Post-investigation action.
13.131 Other procedures.

§ 13.101 Applicability.

(a) This subpart applies to fact-finding investigations in which an investigation has been ordered under § 13.3(c) or § 13.5(f)(2).

(b) This subpart does not limit the authority of any person to issue subpoenas, administer oaths, examine witnesses, and receive evidence in any informal investigation as otherwise provided by law.

§ 13.103 Order of investigation.

The order of investigation—

(a) Defines the scope of the investigation by describing the information sought in terms of its subject matter or its relevancy to specified FAA functions;

(b) Sets forth the form of the investigation which may be either by individual deposition or investigative proceeding or both; and

(c) Names the official who is authorized to conduct the investigation and serve as the presiding officer.

§ 13.105 Notification.

Any person under investigation and any person required to testify and produce documentary or physical evidence during the investigation will be advised of the purpose of the investigation, and of the place where the investigative proceeding or deposition will be convened. This may be accomplished by a notice of investigation or by a subpoena. A copy of the order of investigation may be sent to such persons when appropriate.

§ 13.107 Designation of additional parties.

(a) The presiding officer may designate additional persons as parties to the investigation, if in the discretion of the presiding officer, it will aid in the conduct of the investigation.

(b) The presiding officer may designate any person as a party to the investigation if—

(1) The person petitions the presiding officer to participate as a party;

(2) The disposition of the investigation may as a practical matter impair the ability to protect the person's interest unless allowed to participate as a party; and

(3) The person's interest is not adequately represented by existing parties.

§ 13.109 Convening the investigation.

The presiding officer will conduct the investigation at a location convenient to the parties involved and as expeditious and efficient as handling of the investigation permits.

§ 13.111 Subpoenas.

(a) At the discretion of the presiding officer, or at the request of a party to the investigation, the presiding officer may issue a subpoena directing any person to appear at a designated time and place to testify or to produce documentary or physical evidence relating to any matter under investigation.

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

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

§ 13.113 Noncompliance with the investigative process.

(a) If a person disobeys a subpoena, the Administrator or a party to the investigation may petition a court of the United States to enforce the subpoena in accordance with applicable statutes.

(b) If a party to the investigation fails to comply with the provisions of this subpart or an order issued by the presiding officer, the Administrator may bring a civil action to enforce the requirements of this subpart or any order issued under this subpart in a court of the United States in accordance with applicable statutes.

§ 13.115 Public proceedings.

(a) All investigative proceedings and depositions must be public unless the presiding officer determines that the public interest requires otherwise.

(b) The presiding officer may order information contained in any report or document filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the presiding officer, disclosure would adversely affect the interests of any person and is not required in the public interest or is not otherwise required by statute to be made available to the public. Any person may make written objection to the public disclosure of information, stating the grounds for such objection.

§ 13.117 Conduct of investigative proceeding or deposition.

(a) The presiding officer may question witnesses.

(b) Any witness may be accompanied by counsel.

(c) Any party may be accompanied by counsel and either the party or counsel may—

(1) Question witnesses, provided the questions are relevant and material to the matters under investigation and would not unduly impede the progress of the investigation; and

(2) Make objections on the record and argue the basis for such objections.

(d) Copies of all notices or written communications sent to a party or witness must, upon request, be sent to that person's attorney of record.

§ 13.119 Immunity and orders requiring testimony or other information.

(a) Whenever a person refuses, on the basis of a privilege against self-incrimination, to testify or provide other information during the course of any investigation conducted under this subpart, the presiding officer may, with the approval of the United States Attorney General, or the delegate of the Attorney General, issue an order requiring the person to give testimony or provide other information. However, no testimony or other information so compelled (or any information directly or indirectly derived from such testimony or other information) may be used against the person in any criminal case, except in a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) The presiding officer may issue an order under this section if—

(1) The testimony or other information from the witness may be necessary to the public interest; and

(2) The witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination.

(c) Immunity provided by this section will not become effective until the person has refused to testify or provide other information on the basis of a privilege against self-incrimination, and an order under this section has been issued. An order, however, may be issued prospectively to become effective in the event of a claim of the privilege.

§ 13.121 Witness fees.

All witnesses appearing, other than employees of the Federal Aviation Administration, are entitled to the same fees and allowances as provided for under 28 U.S.C. 1821.

§ 13.123 Submission by party to the investigation.

(a) During an investigation conducted under this subpart, a party may submit to the presiding officer—

(1) A list of witnesses to be called, specifying the subject matter of the expected testimony of each witness; and

(2) A list of exhibits to be considered for inclusion in the record.

(b) If the presiding officer determines that the testimony of a witness or the receipt of an exhibit in accordance with paragraph (a) of this section will be relevant, competent, and material to the investigation, the presiding officer may subpoena the witness or use the exhibit during the investigation.

§ 13.125 Depositions.

Depositions for investigative purposes may be taken at the discretion of the presiding officer with reasonable notice to the party under investigation. Depositions must be taken before the presiding officer or other person authorized to administer oaths and designated by the presiding officer. The testimony must be reduced to writing by the person taking the deposition, or under the direction of that person, and where possible must then be subscribed by the deponent. Any person may be compelled to appear and testify and to produce physical and documentary evidence.

§ 13.127 Reports, decisions, and orders.

The presiding officer must issue a written report based on the record developed during the formal investigation, including a summary of principal conclusions. A summary of principal conclusions must be prepared by the official who issued the order of investigation in every case that results in no action, or no action as to a particular party to the investigation. All such reports must be furnished to the parties to the investigation and made available to the public on request.

§ 13.129 Post-investigation action.

A decision on whether to initiate subsequent action must be made on the basis of the record developed during the formal investigation and any other information in the possession of the Administrator.

§ 13.131 Other procedures.

Any question concerning the scope or conduct of a formal investigation not covered in this subpart may be ruled on by the presiding officer on his or her own initiative, or on the motion of a party or a person testifying or producing evidence.

■ 8. Revise subpart G to read as follows:

Subpart G—Rules of Practice In FAA Civil Penalty Actions

Sec.

13.201 Applicability.
13.202 Definitions.
13.203 Separation of functions.
13.204 Appearances and rights of parties.
13.205 Administrative law judges.
13.206 Intervention.
13.207 Certification of documents.
13.208 Complaint.
13.209 Answer.
13.210 Filing of documents.
13.211 Service of documents.
13.212 Computation of time.
13.213 Extension of time.
13.214 Amendment of pleadings.
13.215 Withdrawal of complaint or request for hearing.
13.216 Waivers.
13.217 Joint procedural or discovery schedule.
13.218 Motions.
13.219 Interlocutory appeals.
13.220 Discovery.
13.221 Notice of hearing.
13.222 Evidence.
13.223 Standard of proof.
13.224 Burden of proof.
13.225 Offer of proof.
13.226 Public disclosure of information.
13.227 Expert or opinion witnesses.
13.228 Subpoenas.
13.229 Witness fees.
13.230 Record.
13.231 Argument before the administrative law judge.
13.232 Initial decision.
13.233 Appeal from initial decision.
13.234 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.
13.235 Judicial review of a final decision and order.
13.236 Alternative dispute resolution.

§ 13.201 Applicability.

This subpart applies to all civil penalty actions initiated under § 13.16 in which a hearing has been requested.

§ 13.202 Definitions.

For this subpart only, the following definitions apply:

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel or the Assistant Chief Counsel responsible for the prosecution of enforcement-related matters under this subpart, or attorneys who are supervised by those officials or are assigned to prosecute a particular enforcement-related matter under this subpart. Agency attorney does not include the Chief Counsel or anyone from the Office of Adjudication.

Complaint means a document issued by an agency attorney alleging a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or a rule, regulation, or order issued under those statutes, that has been filed with the FAA Hearing Docket after a hearing has been requested under § 13.16(f)(3) or (g)(2)(ii).

Complainant means the FAA office that issued the notice of proposed civil penalty under § 13.16.

FAA decisionmaker means the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal, or any person to whom the Administrator has delegated the Administrator's decisionmaking authority in a civil penalty action. As used in this subpart, the FAA decisionmaker is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

Mail includes U.S. mail, U.S. certified mail, U.S. registered mail, or use of an expedited or overnight express courier service, but does not include email.

Office of Adjudication means the Federal Aviation Administration Office of Adjudication, including the FAA Hearing Docket, the Director of the Office of Adjudication and legal personnel, or any subsequently designated office (including its head and any legal personnel) that advises the FAA decisionmaker regarding appeals of initial decisions and orders to the FAA decisionmaker.

Order assessing civil penalty means a document that contains a finding of a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or a rule, regulation, or order issued under those statutes, and may direct payment of a civil penalty. Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge is considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator is considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

Party means the Respondent, the complainant and any intervenor.

Personal delivery includes hand-delivery or use of a contract or express messenger service. ''Personal delivery''

does not include the use of Federal Government interoffice mail service.

Pleading means a complaint, an answer, and any amendment of these documents permitted under this subpart.

Properly addressed means a document that shows an address contained in agency records; a residential, business, or other address submitted by a person on any document provided under this subpart; or any other address shown by other reasonable and available means.

Respondent means a person named in a complaint.

Writing or written includes paper or electronic documents that are filed or served by email, mail, personal delivery, or fax.

§ 13.203 Separation of functions.

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

(b) An agency employee who has engaged in the performance of investigative or prosecutorial functions in a civil penalty action must not participate in deciding or advising the administrative law judge or the FAA decisionmaker in that case, or a factually-related case, but may participate as counsel for the complainant or as a witness in the public proceedings.

(c) The Chief Counsel and the Director and legal personnel of the Office of Adjudication will advise the FAA decisionmaker regarding any appeal of an initial decision or order in a civil penalty action to the FAA decisionmaker.

§ 13.204 Appearances and rights of parties.

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

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party, and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a party must file a notice of appearance in the action, in the manner provided in § 13.210, and must serve a copy of the notice of appearance on each party, and on the administrative law judge, if assigned, in the manner provided in § 13.211, before participating in any proceeding governed by this subpart. The attorney or representative must include the name, address, and telephone number, and, if available, fax number and email address, of the attorney or representative in the notice of appearance.

(c) Any person may request a copy of a document in the record upon payment of reasonable costs. A person may keep an original document, data, or evidence, with the consent of the administrative law judge, by substituting a legible copy of the document for the record.

§ 13.205 Administrative law judges.

(a) *Powers of an administrative law judge.* In accordance with the rules of this subpart, an administrative law judge may:

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

(2) Administer oaths and affirmations;

(3) Issue subpoenas as authorized by law;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

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

(8) Dispose of procedural motions and requests;

(9) Make findings of fact and conclusions of law, and issue an initial decision;

(10) Bar a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding; and

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

(b) *Limitations.* The administrative law judge must not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right under § 13.219(c).

(c) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion for disqualification under § 13.218.

§ 13.206 Intervention.

(a) A person may submit a motion for leave to intervene as a party in a civil penalty action. Except for good cause shown, a motion for leave to intervene must be submitted not later than 10 days before the hearing.

(b) The administrative law judge may grant a motion for leave to intervene if the administrative law judge finds that intervention will not unduly broaden the issues or delay the proceedings and—

(1) The person seeking to intervene will be bound by any order or decision entered in the action; or

(2) The person seeking to intervene has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

(c) The administrative law judge may determine the extent to which an intervenor may participate in the proceedings.

§ 13.207 Certification of documents.

(a) *Signature required.* The attorney of record, the party, or the party's representative must sign, by hand, electronically, or by other method acceptable to the administrative law judge, or, if the matter is on appeal, to the FAA decisionmaker, each document tendered for filing with the FAA Hearing Docket or served on the administrative law judge and on each other party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with the rules in this subpart;

(2) Warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, and not made to cause needless increase in the cost of the proceedings or for any other improper purpose.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the administrative law judge or the FAA decisionmaker must:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker.

§ 13.208 Complaint.

(a) *Filing.* The agency attorney must file the complaint with the FAA Hearing

Docket, or may file a written motion to dismiss a request for hearing under § 13.218 instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing. When filing the complaint, the agency attorney must follow the filing instructions in § 13.210. The agency attorney may suggest a location for the hearing when filing the complaint.

(b) *Service.* An agency attorney must serve a copy of the complaint on the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action. When serving the complaint, the agency attorney must follow the service instructions in § 13.211.

(c) *Contents.* A complaint must set forth the facts alleged, any regulation allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

(d) *Motion to dismiss stale allegations or complaint.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

(1) An administrative law judge may not grant the motion and dismiss the complaint or part of the complaint if the administrative law judge finds that the agency has shown good cause for any delay in issuing the notice of proposed civil penalty.

(2) If the agency fails to show good cause for any delay, an administrative law judge may dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued the notice of proposed civil penalty to the respondent.

(3) A party may appeal the administrative law judge's ruling on the motion to dismiss the complaint or any part of the complaint in accordance with § 13.219(b).

§ 13.209 Answer.

(a) *Writing required.* A respondent must file in the FAA Hearing Docket a written answer to the complaint, or may file a written motion pursuant to § 13.208 or § 13.218 instead of filing an answer, not later than 30 days after service of the complaint. The answer must be dated and signed by the person responding to the complaint. An answer must be typewritten or legibly handwritten.

(b) *Filing.* A person filing an answer or motion under paragraph (a) of this section must follow the filing instructions in § 13.210.

(c) *Service.* A person filing an answer or a motion under paragraph (a) of this section must serve a copy of the answer or motion in accordance with the service instructions in § 13.211.

(d) *Contents.* An answer must specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer. The person filing an answer may recommend a location for the hearing when filing the answer.

(e) *Specific denial of allegations required.* A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each allegation in the complaint. All allegations in the complaint not specifically denied in the answer are deemed admitted. A general denial of the complaint is deemed a failure to file an answer.

(f) *Failure to file answer.* A person's failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint.

§ 13.210 Filing of documents.

(a) *General rule.* Unless provided otherwise in this subpart, all documents in proceedings under this subpart must be tendered for filing with the FAA Hearing Docket.

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

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

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

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

(3) *If delivery is via email or fax.* The email address and fax number for the FAA Hearing Docket, made available on the FAA Office of Adjudication website.

(d) *Date of filing.* If a document is filed by fax or email, the date of filing is the date the email or fax is sent. If a document is filed by personal delivery, the date of filing is the date that personal delivery is accomplished. If a document is filed by mail, the date of filing is the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Form.* Each document must be typewritten or legibly handwritten.

(f) *Contents.* Unless otherwise specified in this subpart, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested.

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

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

§ 13.211 Service of documents.

(a) *General.* A person must serve a copy of all documents on each party and the administrative law judge, if assigned, at the time of filing with the FAA Hearing Docket except as provided otherwise in this subpart.

(b) *Service by the FAA Hearing Docket, the administrative law judge, and the FAA decisionmaker.* The FAA Hearing Docket, the administrative law judge, and the FAA decisionmaker must send documents to a party by personal delivery, mail, fax, or email as provided in this section.

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

(2) *Service by email.* Service of documents by email is voluntary and requires the prior consent of the person to be served by email. A person may retract consent to be served by email by filing a written retraction with the FAA Hearing Docket and serving it on the other party and the administrative law judge. A document that is served by email must be attached as a PDF file to an email message.

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

(e) *Date of service.* If a document is served by fax or served by email, the date of service is the date the email or fax is sent. If a document is served by personal delivery, the date of service is the date that personal delivery is accomplished. If a document is mailed, the date of service is the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

(f) *Valid service.* A document served by mail or personal delivery that was properly addressed, was sent in accordance with this subpart, and that was returned as unclaimed, or that was refused or not accepted, is deemed to have been served in accordance with this subpart.

(g) *Additional time after service by mail.* Whenever a party must respond within a prescribed period after service by mail, 5 days are added to the prescribed period.

(h) *Presumption of service.* There is a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

§ 13.212 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge, or by any applicable statute.

(b) The date of an act, event, or default is not included in a computation of time under this subpart.

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

§ 13.213 Extension of time.

(a) The parties may agree to extend for a reasonable period the time for filing a document under this subpart. The party seeking the extension of time must submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the FAA Hearing Docket. The administrative law judge must sign and issue the order if the extension agreed to by the parties is reasonable.

(b) A party may file a written motion for an extension of time. A written motion for an extension of time must be filed with the FAA Hearing Docket in accordance with § 13.210. The motion must be filed no later than seven days before the document is due unless good cause for the late filing is shown. The party filing the motion must serve a copy of the motion in accordance with § 13.211. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) If the administrative law judge fails to rule on a motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed.

§ 13.214 Amendment of pleadings.

(a) *Filing and service.* A party must file the amendment with the FAA Hearing Docket and must serve a copy of the amendment on the administrative law judge, if assigned, and on all parties to the proceeding.

(b) *Time.* (1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The administrative law judge must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the FAA Hearing Docket and served on the administrative law judge and other parties.

§ 13.215 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

§ 13.216 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 13.217 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, conducting discovery in the proceedings, or both.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file the joint schedule setting forth the dates to which the parties have agreed, in accordance with § 13.210, and must also serve a copy of the joint schedule in accordance with § 13.211. The filing of the joint schedule must include a draft order establishing a joint schedule to be signed by the administrative law judge.

(1) The joint schedule may include, but need not be limited to, requests for discovery, objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the joint schedule.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Joint scheduling order.* The joint schedule filed by the parties is a proposed schedule that requires approval of the administrative law judge to become the joint scheduling order.

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

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with a joint scheduling order, the administrative law judge may impose any of the following sanctions, proportional to the party's failure to comply with the order:

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

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

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

(4) Preclude the relevant portion of the testimony of that party's witnesses at the hearing.

§ 13.218 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by filing a motion in accordance with § 13.210. A party must serve a copy of each motion in accordance with § 13.211.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion not later than 30 days before the hearing in the FAA Hearing Docket in accordance with § 13.210, and must serve a copy on the administrative law judge, if assigned, and on each party in accordance with § 13.211. Motions introduced during a hearing may be made orally on the record unless the administrative law judge directs otherwise.

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

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

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

(2) *Prehearing motions.* The administrative law judge must resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

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

(f) *Specific motions.* The motions that a party may file include but are not limited to the following:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the administrative law judge denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 10 days after service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of a provision of the Federal aviation statute listed in the first sentence in 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or any implementing rule, regulation, or order, or a violation of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or any implementing rule, regulation, or order.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an administrative law judge grants a motion to dismiss in part, a party may appeal the administrative law judge's ruling on the motion to dismiss under § 13.219(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint in the FAA Hearing Docket and must serve a copy of the complaint on the administrative law judge and on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may appeal to the FAA decisionmaker under § 13.233. If required by the decision on appeal, the agency attorney must file a complaint in the FAA Hearing Docket and must serve a copy of the complaint on the administrative law judge and each party not later than 10 days after service of the FAA decisionmaker's decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer, including a motion to dismiss a stale complaint or allegations as provided in § 13.208. If the motion to dismiss is not granted, the respondent must file an answer in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the agency attorney may file an appeal in the FAA Hearing Docket under § 13.233 and must serve each other party. If required by the FAA decisionmaker's decision on appeal, the respondent must file an answer in the FAA Hearing Docket, and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the decision on appeal.

(3) *Motion for a more definite statement.* A party may file a motion for a more definite statement of any pleading which requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the administrative law judge grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the administrative law judge may strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent must file an answer in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the administrative law judge grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge may strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, impertinent, or scandalous matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading. A motion to strike must be filed in the FAA Hearing Docket and served on the

administrative law judge, if assigned, and on each other party.

(5) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing shows that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(6) *Motion for disqualification.* A party may file a motion for disqualification in the FAA Hearing Docket and must serve a copy on the administrative law judge and on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification in a motion for disqualification, including, but not limited to, a financial or other personal interest that would be affected by the outcome of the enforcement action, personal animus against a party to the action or against a group to which a party belongs, prejudgment of the adjudicative facts at issue in the proceeding, or any other prohibited conflict of interest. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Response.* A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge must render a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with § 13.219(b).

(7) *Motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing or order dismissing a request for hearing and answer.* The FAA decisionmaker may treat motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing, or order dismissing a request for hearing and answer as a notice of appeal under § 13.233, and if the motion was filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker will issue a briefing schedule.

§ 13.219 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review as provided in § 13.235.

(b) *Interlocutory appeal for cause.* If a party orally requests or files a written request for an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. Any written request for interlocutory appeal for cause must be filed in the FAA Hearing Docket and served on each party and on the administrative law judge. If the administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge must grant the request if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal of right, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a person from the proceedings;

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with § 13.215; or

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

(d) *Procedure.* A party must file a notice of interlocutory appeal, with supporting documents, with the FAA Hearing Docket, and must serve a copy of the notice and supporting documents on each party and the administrative law judge not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right, or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause, as appropriate. A party must file a reply, if any, with the FAA Hearing Docket, and serve a copy on each party and the administrative law judge not later than 10 days after service of the appeal. The FAA decisionmaker must render a decision on the interlocutory appeal on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) *Summary rejection.* The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 13.220 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section without the consent or approval of the administrative law judge at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: Depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party must not file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and response with the FAA Hearing Docket or serve them on the administrative law judge. In the event of a discovery dispute, a party must attach a copy of the relevant documents in support of a motion made under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests.* Unless otherwise directed by this subpart or agreed by the parties, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing.

(f) *Limiting discovery.* The administrative law judge must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

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

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

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

(g) *Confidential orders.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order in the FAA Hearing Docket in accordance with § 13.210, and must serve a copy of the motion for a confidential order on each party and on the administrative law judge in accordance with § 13.211.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the administrative law judge determines that the requested material is not necessary to decide the case, the administrative law judge must preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the administrative law judge determines that the requested material is necessary to decide the case and that a confidential order is warranted, the administrative law judge must provide:

(i) An opportunity for review of the document by the parties off the record;

(ii) Procedures for excluding the information from the record; and

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(h) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order in the FAA Hearing Docket and must serve a copy of the motion for protective order on the administrative law judge and each other party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness's testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions*—(1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In foreign countries, a party must take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, the administrative law judge, and each party not later than 7 days before the deposition. The notice must be filed in the FAA Hearing Docket simultaneously. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. The party noticing a deposition must attach a copy of any subpoena *duces tecum* requesting that materials be produced at the deposition to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party must answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party must state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party must not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory must be counted as a separate interrogatory.

(2) A party must file a motion for leave to serve additional interrogatories on a party with the administrative law judge before serving additional interrogatories on a party. The

administrative law judge may grant the motion only if the party shows good cause.

(l) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the administrative law judge determines that a response does not comply with the requirements of this paragraph (l)(2) or that the response is insufficient, the matter is deemed admitted.

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

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer. Any motion to compel must be filed with the FAA Hearing Docket and served on the administrative law judge and other parties in accordance with §§ 13.210 and 13.211, respectively.

(n) *Failure to comply with a discovery order.* If a party fails to comply with a discovery order, the administrative law judge may impose any of the following sanctions proportional to the party's failure to comply with the order:

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

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

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

(4) Preclude the relevant portion of the testimony of that party's witnesses at the hearing.

§ 13.221 Notice of hearing.

(a) *Notice.* The administrative law judge must provide each party with notice of the date, time, and location of the hearing at least 60 days before the hearing date.

(b) *Date, time, and location of the hearing.* The administrative law judge to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

(c) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

§ 13.222 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge must admit any relevant oral, documentary, or demonstrative evidence introduced by a party, but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 13.223 Standard of proof.

The administrative law judge must issue an initial decision or must rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

§ 13.224 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 13.225 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

§ 13.226 Public disclosure of information.

(a) The administrative law judge may order that any information contained in the record be withheld from public disclosure. Any party or interested person may object to disclosure of information in the record by filing and serving a written motion to withhold specific information in accordance with §§ 13.210 and 13.211 respectively. A party may file a motion seeking to protect from public disclosure information contained in a document that the party is filing at the same time it files the document. The person or party must state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge must grant the motion to withhold if, based on the motion and any response to the motion, the administrative law judge determines that: Disclosure would be detrimental to aviation safety; disclosure would not be in the public interest; or the information is not otherwise required to be made available to the public.

§ 13.227 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness for any party other than the

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

§ 13.228 Subpoenas.

(a) *Request for subpoena.* The administrative law judge, upon application by any party to the proceeding, may issue subpoenas requiring the attendance of witnesses or the production of documents or tangible things at a hearing or for the purpose of taking depositions, as permitted by law. A request for a subpoena must show its general relevance and reasonable scope. The party must serve the subpoena on the witness or the holder of the documents or tangible items as permitted by applicable statute. A request for a subpoena must be filed and served in accordance with §§ 13.210 and 13.211, respectively. Absent good cause shown, the filing and service must be completed as follows:

(1) Not later than 15 days before a scheduled deposition under the subpoena; or

(2) Not later than 30 days before a scheduled hearing where attendance at the hearing is sought.

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

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the appropriate U.S. district court to seek judicial enforcement of the subpoena.

§ 13.229 Witness fees.

(a) *General.* The party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and allowances provided for under 28 U.S.C. 1821.

§ 13.230 Record.

(a) *Exclusive record.* The pleadings, transcripts of the hearing and prehearing conferences, exhibits admitted into evidence, rulings, motions, applications, requests, briefs, and responses thereto, constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding. Any proceedings regarding the disqualification of an administrative law judge must be included in the record. Though only exhibits admitted into evidence are part of the record before an administrative law judge, evidence proffered but not admitted is also part of the record on appeal, as provided by § 13.225.

(b) *Examination and copying of record.* The parties may examine the record at the FAA Hearing Docket and may obtain copies of the record upon payment of applicable fees. Any other person may obtain copies of the releasable portions of the record in accordance with applicable law.

§ 13.231 Argument before the administrative law judge.

(a) *Arguments during the hearing.* During the hearing, the administrative law judge must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the administrative law judge must allow the parties to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Post-hearing briefs.* The administrative law judge may request written post-hearing briefs before the administrative law judge issues an initial decision in the proceedings if the administrative law judge finds that submission of written arguments would be reasonable. If a party files a written post-hearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give the parties a reasonable opportunity, but not more than 30 days after receipt of the transcript, to prepare and submit the briefs. A party must file and serve any post-hearing brief in in accordance with §§ 13.210 and 13.211, respectively.

§ 13.232 Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge must include findings of fact and conclusions of law, as well as the grounds supporting those findings and conclusions, for all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, and the amount of any civil penalty found appropriate by the administrative law judge. The administrative law judge must also include a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge must make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge's oral initial decision and order must be on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last post-hearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge must serve a copy of any written initial decision on each party.

(d) *Reconsideration of an initial decision.* The FAA decisionmaker may treat a motion for reconsideration of an initial decision as a notice of appeal

under § 13.233, and if the motion was filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker will issue a briefing schedule, as provided in § 13.218.

(e) *Order assessing civil penalty.* Unless appealed pursuant to § 13.233, the initial decision issued by the administrative law judge is considered an order assessing civil penalty if the administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. The administrative law judge may not assess a civil penalty exceeding the amount sought in the complaint.

§ 13.233 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the administrative law judge's initial decision, and any decision not previously appealed to the FAA decisionmaker on interlocutory appeal pursuant to § 13.219, by filing a notice of appeal in accordance with § 13.210 no later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties. The party must serve a copy of the notice of appeal on each party in accordance with § 13.211. A party is not required to serve any documents under § 13.233 on the administrative law judge.

(b) *Issues on appeal.* In any appeal from a decision of an administrative law judge, the FAA decisionmaker considers only the following issues:

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

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors.

(c) *Perfecting an appeal.* Except as follows in paragraphs (c)(1) and (2) of this section, a party must perfect an appeal to the FAA decisionmaker no later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the parties by filing an appeal brief in accordance with § 13.210 and serving a copy on every other party in accordance with § 13.211.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to perfect the appeal, the FAA decisionmaker must serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension in accordance with § 13.210 and must serve a copy of the motion on each party under § 13.211. Any party may file a written response to the motion for extension no later than 10 days after service of the motion. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party must file the appeal brief in accordance with § 13.210 and must serve a copy of the appeal brief on each party in accordance with § 13.211.

(1) A party must set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also must set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party must specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker.

(e) *Reply brief.* Except as follows in paragraphs (e)(1) and (2) of this section, any party may file a reply brief in accordance with § 13.210 not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief must serve a copy of the reply brief on each party in accordance with § 13.211. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to file the reply brief, the FAA decisionmaker must serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension in accordance with § 13.210 and must serve a copy of the motion on each party in accordance with § 13.211. Any party choosing to respond to the motion must file and serve a written response to the motion no later than 10 days after service of the motion The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The FAA decisionmaker may allow any person to submit an *amicus curiae* brief in an appeal of an initial decision. A party may not file more than one brief unless permitted by the FAA decisionmaker. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and must serve a copy of the petition on each party. The party may not file the additional brief with the petition. The FAA decisionmaker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party must file the original plus one copy of the appeal brief or reply brief, but only one copy if filing by email or fax, as provided in § 13.210.

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

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection in an appeal brief, or any argument in the reply brief, if a party's objection or argument is based on evidence contained on the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, when considering the issues on appeal. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or remand the case for any proceedings that the FAA decisionmaker determines may be necessary. The FAA decisionmaker may assess a civil penalty but must not

assess a civil penalty in an amount greater than that sought in the complaint.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the FAA decisionmaker requires the consideration of additional testimony or evidence, the FAA decisionmaker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the FAA decisionmaker is solely an issue of law, or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the FAA decisionmaker.

(2) The FAA decisionmaker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party. Unless a petition for review is filed pursuant to § 13.235, a final decision and order of the Administrator will be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is precedent in any other civil penalty action. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the FAA decisionmaker is not precedent in any other civil penalty action.

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

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party must file a petition to reconsider or modify in accordance with § 13.210 not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and must serve a copy of the petition on each party in accordance with § 13.211. A party is not required to serve any documents under this section on the administrative law judge. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA decisionmaker.

(b) *Number of copies.* The parties must file the original plus one copy of the petition or the reply to the petition, but only one copy if filing by email or fax, as provided in § 13.210.

(c) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party must describe these allegations and must describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any party replying to a petition to reconsider or modify must file the reply in accordance with § 13.210 no later than 10 days after service of the petition on that party, and must also serve a copy of the reply on each party in accordance with § 13.211.

(f) *Effect of filing petition.* The filing of a timely petition under this section will stay the effective date of the FAA decisionmaker's decision and order on appeal until final disposition of the petition by the FAA decisionmaker.

(g) *FAA decisionmaker's decision on petition.* The FAA decisionmaker has discretion to grant or deny a petition to reconsider. The FAA decisionmaker will grant or deny a petition to reconsider within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

§ 13.235 Judicial review of a final decision and order.

(a) In cases under the Federal aviation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 46110(a), and, as applicable, in 49 U.S.C. 46301(d)(7)(D)(iii), 46301(g), or 47532.

(b) In cases under the Federal hazardous materials transportation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 5127.

(c) A party seeking judicial review of a final order issued by the Administrator may file a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the United States Court of Appeals for the circuit in which the party resides or has its principal place of business.

(d) The party must file the petition for review no later than 60 days after service of the Administrator's final decision and order.

§ 13.236 Alternative dispute resolution.

Parties may use mediation to achieve resolution of issues in controversy addressed by this subpart. Parties seeking alternative dispute resolution services may engage the services of a mutually acceptable mediator. The mediator must not participate in the adjudication under this subpart of any matter in which the mediator has provided mediation services. Mediation discussions and submissions will remain confidential consistent with the provisions of the Administrative Dispute Resolution Act and other applicable Federal laws.

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on or about August 17, 2021.

Steve Dickson,

Administrator.

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