

with the motion. The FAA decisionmaker may grant permission 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 brief and two copies of the brief with the Federal Docket Management System and serve one copy on each other party.

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

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection or argument in a brief if the party does not specifically refer in the brief to the pertinent evidence from the record.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, to determine if the administrative law judge committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues 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.

(3) A final decision and order of the FAA decisionmaker is precedent in any other civil penalty action under this part. 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.

[Docket No. FAA-2001-8607, 66 FR 2180, Jan. 10, 2001, as amended at 72 FR 68477, Dec. 5, 2007]

**§ 406.177 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 with the Federal Docket Management System 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. 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) *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

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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.

(c) *Repetitious and frivolous petition.* The FAA decisionmaker will not consider a repetitious or frivolous petition. The FAA decisionmaker may summarily dismiss any repetitious or frivolous petition to reconsider or modify.

(d) *Reply to petition.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply. A party must serve a copy of the reply on each party.

(e) *Effect of filing petition.* Unless otherwise ordered by the FAA decisionmaker, filing a petition under this section stays the effective date of the FAA decisionmaker's final decision and order on appeal, and tolls the time allowed for judicial review.

(f) *FAA decisionmaker's decision on petition.* 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.

[Docket No. FAA-2001-8607, 66 FR 2180, Jan. 10, 2001, as amended at 72 FR 68477, Dec. 5, 2007]

**§ 406.179 Judicial review of a final decision and order.**

(a) A person may seek judicial review of a final decision and order of the FAA decisionmaker as provided in 5 U.S.C. chapter 7 and 28 U.S.C. 1331. A party seeking judicial review must file with a United States district court.

(b) In accordance with § 406.9(e)(iv), if a person seeks judicial review not later than 60 days after the final decision and order has been served on the respondent, the final decision and order is stayed.

(c) In accordance with § 406.9(i), if a respondent does not pay a civil penalty and does not file an appeal with the United States district court within 60 days after service of the final decision and order, the FAA may refer the order to the United States Department of Treasury or Department of Justice to collect the civil penalty.