

FREQUENTLY ASKED QUESTIONS
ABOUT FAA CIVIL PENALTY
ADJUDICATION PROCEEDINGS

1. Q: **Are there rules governing FAA civil penalty proceedings?**

A: Yes. FAA civil penalty proceedings are governed by the Rules of Practice, 14 C.F.R. § 13.16 and Part 13, subpart G (§§ 13.201 – 13.235). These rules will tell you, for example, when and how you must file certain documents. You should familiarize yourself with these rules and refer to them frequently throughout the hearing and appeal processes.

2. Q: **How do I get a copy of the Rules of Practice?**

A: The Rules of Practice are available on the Internet at:

1. The FAA's civil penalty adjudication website at:

http://www.faa.gov/about/office_org/headquarters/offices/agc/pol_adjudication/AGC400/Civil_Penalty.

If you use www.faa.gov/agc/cpwebsite or www.faa.gov/agc/website, you should be redirected to the new website address.

You also can obtain copies of decisions issued by the Administrator, indexes of the decisions, and additional information about the FAA's civil penalty adjudication program at this website.

2. The GPO Access website at: www.gpoaccess.gov/nara. (Click on eCFR for the most up-to-date version).

You also can obtain other regulations, including the Federal Aviation Regulations, 14 C.F.R. Parts 1 - 199, and the Hazardous Materials Regulations, 49 C.F.R. Parts 171 - 180, at this site.

3. Q: **Do I need to file *all* documents (for example, the request for hearing, the complaint, the answer, motions and briefs) in the FAA Hearing Docket?**

A: Generally, yes; you should file the request for hearing and all subsequent documents in the FAA Hearing Docket. See 14 C.F.R. 13.16(f)(3), 13.16(g)(2), and 13.210.

* Exception: A party is not ordinarily required to file written interrogatories and responses, requests for production of

documents or tangible items, and responses, and requests for admission in the Hearing Docket. See 14 C.F.R. § 13.220(b).

You may file documents in the FAA Hearing Docket by (1) personal delivery; (2) U.S. Mail; or (3) commercial expedited courier. See 14 C.F.R. §§ 13.202 (mail) and 13.210(a).

Note about the use of fax: If you fax a document to the Hearing Docket, you also must send it to the Hearing Docket by personal delivery, U.S. Mail, or expedited courier.

4. Q: **What is the FAA Hearing Docket’s address?**

A: Mailing Address *(use when sending items by U.S. Mail only)*

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, SW
Wilbur Wright Building – Suite 2W1000
Washington, DC 20591
Attention: Hearing Docket Clerk, AGC-430

Street Address (for hand-carried personal delivery or commercial expedited deliveries, such as UPS or Federal Express.)

Hearing Docket
Federal Aviation Administration
600 Independence Avenue, SW
Wilbur Wright Building – Suite 2W1000
Washington, DC 20591
Attention: Hearing Docket Clerk, AGC-430

5. Q: **What are the FAA Hearing Docket’s telephone and fax numbers?**

A: Tel.: (202) 385-8229 and (202) 385-8230.
Fax: (202) 493-5123 and (202) 493-5020.

6. Q: **Do I need to send copies of documents to anyone else?**

A: Yes. You must send a copy of all documents to the other party (the Agency Attorney (“Complainant”) or the person who requested the hearing and responded to the complaint (the “Respondent”). See 14 C.F.R. §§ 13.202 (complainant and respondent), 13.211(a), 13.218(a), 13.233(a), 13.233(d), 13.233(e), 13.234(a), 13.234(e).

7. Q: **Should I send copies of documents to the Administrative Law Judge?**

A: Yes (except for discovery documents mentioned in 14 C.F.R. § 13.220(b))

After the Agency Attorney files the Complaint, your case will be assigned to a Department of Transportation (“DOT”) Administrative Law Judge. The Administrative Law Judge will provide instructions about sending copies of documents to him or her. You should follow those directions.

8. Q: **What are the Administrative Law Judge’s address, and telephone and fax numbers?**

A: Department of Transportation
Office of Hearings, M-20
1200 New Jersey Avenue, SE
East Building – Ground Floor
Washington, DC 20590
Tel.: (202) 366-2142
Fax: (202) 366-7536

9. Q: **What if my address changes after I request a hearing?**

A: It is important to inform the Administrative Law Judge, the FAA Hearing Docket, and the other party about any address changes. If you do not inform them about an address change, you may not receive important notices, such as the Notice of Hearing.

10. Q: **What happens after a hearing is requested?**

A: The Agency Attorney will file a Complaint in the FAA Hearing Docket and will send a copy to the party who requested the hearing. The Complaint includes the alleged violations and the civil penalty that the Agency Attorney is seeking. See 14 C.F.R. § 13.208.

The Agency Attorney must file an original and one copy of the complaint in the FAA Hearing Docket. 14 C.F.R. § 13.208(a).

11. Q: **I received the Complaint. What do I do now?**

A: You must file an “Answer.” An Answer is a written document. It may be in the form of a letter. See 14 C.F.R. § 13.209(a).

Your Answer must state whether you admit, deny or do not have sufficient information to admit or deny *each* paragraph of the Complaint. See 14 C.F.R. § 13.209(e).

Example:

Paragraph 1 of the Complaint: Admit

Paragraph 2 of the Complaint: Deny

If you write in your answer that you deny all of the allegations in the Complaint, without addressing each allegation individually, the Administrative Law Judge will consider your response as an admission of the truth of each allegation in the complaint, and may then issue an order assessing a civil penalty against you. 14 C.F.R. § 13.209(e). For this reason, it is important to address each allegation individually, as explained above.

You must file an original and one copy in the FAA Hearing Docket. See 14 C.F.R. § 13.209(b).

Instead of filing an answer, you may, when appropriate, file a written motion to dismiss the allegations of the complaint under 14 C.F.R. § 13.209(d) or a motion to dismiss the complaint under 14 C.F.R. §§ 13.218(f)(1) – (f)(4). See 14 C.F.R. § 13.209(a).

12. Q: **Do I have to file an Answer if I have replied in writing to a Notice of Proposed Civil Penalty or a Final Notice of Proposed Civil Penalty?**
- A: Yes. You must file an Answer, regardless of what documents you may have already sent to the Agency Attorney. The Administrative Law Judge does not have copies of the documents that you sent to the Agency Attorney before the Complaint was filed.
13. Q: **When is the Answer due?**
- A: You must file the Answer in the FAA Hearing Docket no later than 30 days after the Agency Attorney sends the Complaint. See 14 C.F.R. § 13.209(a). If the Agency Attorney sent the Complaint by U.S. Mail or expedited courier, you get an extra 5 days (a total of 35 days) in which to send your Answer to the Hearing Docket. See 14 C.F.R. § 13.211(e).
14. Q: **What will happen if I do not file an Answer, or if I file my Answer late?**
- A: The Administrative Law Judge may interpret your failure to file an Answer or to file an Answer on time as an admission of the allegations in the Complaint. If so, the Administrative Law Judge may dismiss your Request for Hearing and impose a civil penalty against you. See 14 C.F.R. § 13.209(e). That is why it is important to file an Answer

properly and on time.

15. Q: **How will I know when my case is set for hearing?**

A: The Administrative Law Judge will send you a notice of the hearing's date, time, and location at least 60 days before the hearing. See 14 C.F.R. § 13.221.

16. Q: **How do I get a copy of a document that has been filed in the FAA Hearing Docket? Are the documents filed by the parties available over the Internet?**

A: You can request a copy from the FAA Hearing Docket Clerk. Also, generally, documents filed in the FAA Hearing Docket are available on-line through the DOT's Docket Management System at <http://dms.dot.gov>. (Click on Simple Search and type in the DMS number assigned to the case without the agency identifier (FAA) and year.) See 14 C.F.R. § 13.210(e)(1).

Be aware that with very few exceptions, documents filed in the FAA Hearing Docket are scanned and made available over the Internet. The documents also are publicly available at the FAA Hearing Docket. As a result, if you are filing a document that contains personal information, (for example, tax returns, medical information) or security information, you should consider seeking a protective order from the judge. See 14 C.F.R. §§ 13.220(h) and 13.226.

17. Q: **If a document is due on a certain date, must the FAA Hearing Docket receive it by that date?**

A: If you hand-carry the document to the FAA Hearing Docket, then the FAA Hearing Docket must receive it no later than on the due date.

If you mail or send the document by expedited courier, then you must deposit it in the mail or send it by courier no later than on the due date. See 14 C.F.R. § 13.210(b).

The filing date will be:

- the date of personal delivery;
- the mailing date on the certificate of service;
- the postmark date, if there is no certificate of service; or
- the mailing date as shown by other evidence if there is no certificate of service or postmark. 14 C.F.R. § 13.210(b).

18. Q: **What is a certificate of service, and am I required to attach a certificate of service to documents that I file?**

A: A certificate of service is a written statement certifying that you are delivering or sending an attached document on a certain date to each party at specified addresses. See 14 C.F.R. § 13.211(c).

You should indicate in the certificate of service when you sent a copy to the FAA Hearing Docket, and by what form of delivery.

Also, if you sent a copy of the document directly to the Administrative Law Judge, you should state that in the certificate.

It is good practice to attach a certificate of service to each document that you file, although a certificate of service is not required under the rules.

If you attach a certificate of service to a document, you must sign and date the certificate.

19. Q: **What if I decide to withdraw my Request for Hearing?**

A: You can withdraw your Request for Hearing at any time. See 14 C.F.R. § 13.215. You should file a motion in the FAA Hearing Docket explaining that you are withdrawing your Request for Hearing. You should send a copy to the Agency Attorney and the Administrative Law Judge. The case is not closed until the Administrative Law Judge dismisses it.

If the Administrative Law Judge has scheduled a hearing, it would be helpful if you also contacted the Agency Attorney and the Administrative Law Judge by telephone and fax. This is especially important if you are withdrawing your Request for Hearing less than 30 days prior to the hearing date.

20. Q: **What if the parties reach a settlement?**

A: It is a good practice to put the settlement agreement into writing. The Agency Attorney should file a motion withdrawing the Complaint, and the Respondent should file a motion withdrawing the Request for Hearing and the Answer. These motions should be sent to the the FAA Hearing Docket.

The parties should send a copy of the motions to the Administrative Law Judge if a hearing has not yet been held. If a hearing is scheduled, the parties should contact the Administrative Law Judge's office by telephone

and fax to ensure that the Administrative Law Judge knows about the settlement before traveling to the hearing location unnecessarily.

The case is not closed until the Administrative Law Judge issues an order dismissing the case.

21. Q: **How many days do I have to respond to a written motion?**

A: You have 10 days to respond to a motion that was hand-delivered to you. If the motion was sent to you by mail or expedited courier, you have an extra 5 days (a total of 15 days) in which to respond. See 14 C.F.R. §§ 13.218(d) and 13.211(e).

22. Q: **How many copies of a motion or an opposition to a motion am I required to file in the FAA Hearing Docket?**

A: You are required to file an original and one copy of a motion or an opposition to a motion.. See 14 C.F.R. § 13.210(a). You must serve a copy of the motion or the opposition to a motion on the other party.

23. Q: **How do I get a subpoena?**

A: You should contact the FAA Hearing Docket Clerk, who will provide a signed, but otherwise blank, subpoena. You are responsible for filling out the subpoena and serving it on the witness. See 14 C.F.R. § 13.228(a).

We recommend that you serve a subpoena by personal delivery, certified mail, or another form of delivery service, such as Federal Express or UPS, that provides delivery confirmation.

24. Q: **What happens at a hearing?**

A: An Administrative Law Judge presides over a hearing. There is no jury. Each party will have an opportunity to present an opening statement.

Unless the Administrative Law Judge rules otherwise, each party will have a chance to present witnesses and documentary evidence to support its case. Complainant will present its evidence first, and Respondent will have an opportunity to cross-examine Complainant's witnesses. Then Respondent will have an opportunity to present its witnesses, and the Agency Attorney will be allowed to cross-examine Respondent's witnesses.

After both parties have presented their witnesses and evidence, but before the Administrative Law Judge issues a decision, each party may present oral closing argument. See 14 C.F.R. § 13.231(b). Sometimes, the

Administrative Law Judge will ask the parties to file written closing statements.

Written closing statements must be filed with the FAA Hearing Docket, and copies should be sent directly to the Administrative Law Judge and to the opposing party or counsel.

25. Q: **Should I hire an attorney?**

A: You may represent yourself or be represented by counsel or someone who is not an attorney. See 14 C.F.R. § 13.204. You should give serious consideration to hiring an attorney because civil penalty matters can be complex.

26. Q: **Do I have the right to a court-appointed attorney?**

A: No.

27. Q: **Will the Administrative Law Judge decide my case at the end of the hearing?**

A: The Administrative Law Judge may issue an oral initial decision at the end of the hearing, or a written initial decision later. See 14 C.F.R. §§ 13.232(b) and (c).

28. Q: **May I appeal from an initial decision?**

A: Yes. Appealing from an initial decision is a two-step process.

Notice of Appeal. First, you must file a Notice of Appeal. A Notice of Appeal is a short written document explaining that you are appealing from an initial decision issued by an Administrative Law Judge. See 14 C.F.R. § 13.233(a).

Appeal Brief. Second, you must perfect your appeal by filing an Appeal Brief, in which you present your arguments in detail. See 14 C.F.R. § 13.233(d).

29. Q: **When is a Notice of Appeal due? How many copies am I required to file?**

A: A Notice of Appeal is due 10 days after the Administrative Law Judge issues an oral initial decision at a hearing or 15 days after the Administrative Law Judge serves a written initial decision by mail. See 14 C.F.R. §§ 13.233(a) and 13.211(e).

You are required to file an original and one copy of the Notice of Appeal in the FAA Hearing Docket. See 14 C.F.R. § 13.210(a). You must also serve a copy on the opposing party. 14 C.F.R. § 13.233(a).

30. Q: **When is my Appeal Brief due? How many copies am I required to file?**

A: An Appeal Brief is due 50 days after the issuance of an oral initial decision at a hearing or 55 days after the issuance of a written decision sent by mail. See 14 C.F.R. §§ 13.233(c) and 13.211(e).

You are required to file an original and two copies of your appeal brief in the FAA Hearing Docket. 14 C.F.R. § 13.233(g). You must also serve a copy on the opposing party. 14 C.F.R. § 13.233(d).

31. Q: **Who decides an appeal?**

A: The Administrator of the FAA is the decisionmaker. See 14 C.F.R. §§ 13.202 and 13.233. The Agency Attorney who prosecutes the case does not advise the Administrator on appeals. See 14 C.F.R. § 13.203.

32. Q: **The other party has filed an Appeal Brief. May I file a Reply Brief? If so, when is my Reply Brief due and how many copies must I file?**

A: Yes. You may file a reply brief no later than:

- 35 days after an appeal brief is hand-delivered to you; or
- 40 days after an appeal brief is sent to you by mail or commercial expedited courier.

See 14 C.F.R. §§ 13.233(e) and 13.211(e).

You must send the original reply brief and two copies to the FAA Hearing Docket. 14 C.F.R. § 13.233(g). You must also send one copy to the other party. See 14 C.F.R. §§ 13.233(e).

33. Q: **What if I cannot finish my brief on time?**

A: You should ask the Administrator for an extension of time *before the due date passes*. Follow these steps:

(1) Contact the other party and ask whether the party would object if you request an extension of time.

(2) File a motion or letter in the FAA Hearing Docket, requesting an

extension of time. Explain in the motion or letter whether the other party has agreed to your request. You should send a copy to the other party. See Question # 22.

The Administrator will consent to an extension of time based upon an agreement between the parties to extend the due date for a brief. See 14 C.F.R. §§ 13.233(c)(1) and (e)(1).

If, however, the parties do not agree to an extension of time, the Administrator will only grant the request if you show in your motion good cause for the extension. For this reason, you should explain in your motion why you need the extension of time. See 14 C.F.R. §§ 13.233(c)(2) and (e)(2).

The Administrator will not grant requests for extension of time by phone.

You will receive an order either granting or denying your request for an extension of time.

If you file your request for an extension of time after the due date for the brief has passed, then you must explain why your request is late. The Administrator will consider a late-file request for extension of time if you demonstrate good cause for the lateness.

34. Q: **What if I file my appeal brief late or if I do not file an appeal brief at all?**

A: The Administrator may dismiss your appeal if you do not file an appeal brief or if you file your appeal brief late without good cause. See 14 C.F.R. § 13.233(d)(2).

35. Q: **I want to withdraw my appeal. What do I do?**

A: File a motion in the FAA Hearing Docket withdrawing your Notice of Appeal and Appeal Brief (if you filed one.) See Question # 22. The Administrator will issue an order dismissing your appeal. If the Administrative Law Judge assessed a civil penalty against you in the initial decision, then you must pay that penalty. See Question # 37.

36. Q: **The Administrator has issued a decision, assessing a civil penalty against me. May I appeal?**

A: You have the following options:

- You may petition the Administrator to reconsider her decision. See 14 C.F.R. § 13.234.

- You may file a petition for review of the Administrator’s decision in the United States Court of Appeals for the District of Columbia Circuit or in the appropriate United States Court of Appeals, under 49 U.S.C. § 46110 or 49 U.S.C. § 5227. See 14 C.F.R. §§ 13.16(m) and 13.235.

37. Q: **How do I pay a civil penalty?**

A: You may pay the civil penalty with a certified check or money order, made payable to the Federal Aviation Administration. See 14 C.F.R. § 13.16(k). The Agency Attorney will provide you with the address to which you should mail the check or money order. The Agency Attorney will also provide you with information about paying a civil penalty by major credit card or electronic funds transfer.

38. Q: **Is my case before the National Transportation Safety Board (NTSB)?**

A: No. The NTSB is an independent government agency that is not connected to the FAA or the DOT. If an FAA attorney has filed a Complaint against you under 14 C.F.R. § 13.208, your case will be handled by an Administrative Law Judge employed by the DOT. If you file an appeal from the Administrative Law Judge’s decision, the Administrator of the FAA will decide your appeal. See Questions # 7 and # 31.

39. Q: **Can I get reimbursed for my attorney’s fees and other expenses?**

A: In general, an eligible party who prevailed in a civil penalty action is entitled to reimbursement of attorney’s fees and other expenses unless the agency’s position in the civil penalty action was substantially justified. See 14 C.F.R. § 14.04(a).

Eligibility requirements are set forth in 14 C.F.R. § 14.03.

If you prevailed in a civil penalty case and meet the eligibility requirements, and the agency’s position in the civil penalty action was not substantially justified, you may file in the FAA Hearing Docket an application for attorney’s fees and expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 and 14 C.F.R. § 14.01. See 14 C.F.R. §§14.10 - 14.12 for a description of the information that you must include in your application for fees and other expenses.

The rules implementing the EAJA are published at 14 C.F.R. §§ 14.01 – 14.30, and are available on the FAA’s civil penalty website and on the GPO Access website. See Question # 2.

40. Q: **Are the Administrator's decisions available on Lexis and Westlaw?**

A: Yes. The decisions are available on Lexis (TRANS library) and Westlaw (FTRAN-FAA database.) They are also available on the FAA's civil penalty website. See Question # 2.

NOTE

This document does not constitute legal authority or advice and should not be cited or relied upon as such. The responses to these questions are intended to help parties understand the FAA's civil penalty hearing process and to refer them to the proper legal authority, such as the Rules of Practice in Civil Penalty Actions. This document is not intended as a substitute for proper legal research. Parties and attorneys should always consult the full text of the applicable rules of practice or statutory provisions.