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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA-2006-26477]

Rules of Practice in FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: We are amending the procedural regulations governing the FAA's administrative assessment of civil penalties for violations of certain provisions of the Federal aviation statute and the Federal hazardous materials. We are also amending the FAA's procedural regulations governing non-civil penalty enforcement matters. These change are necessary to update the regulations and to reflect statutory changes. The intended effect of these changes is to ensure that regulated parties have current and correct procedural information.

DATES: This rule is effective on December 5, 2006.

FOR FURTHER INFORMATION CONTACT: Vicki Sherman Leemon, Office of the Chief Counsel, Adjudication Branch, AGC-439, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202/385-8227.

SUPPLEMENTARY INFORMATION:

Background

The Administrator of the FAA may impose a civil penalty not exceeding specified amounts on a person, other than an individual acting as a pilot, flight engineer, mechanic or repairman, only after notice and an opportunity for hearing on the record under 49 U.S.C. 46301(d)(7)(A). The Administrator's authority to assess civil penalties under 49 U.S.C. 46301(d) extends only to civil penalties that do not exceed the maximum amounts specified in 49 U.S.C. 46301(d)(8) as follows:

- (a) \$50,000, if the violation was committed by a person before December 12, 2003 (the date of enactment of Vision 100--Century of Aviation Reauthorization Act);

- (b) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after December 12, 2003;
- (c) \$50,000, if the violation was committed by an individual or small business concern on or after December 12, 2003.

To implement this civil penalty assessment authority, we issued procedural rules published at 14 CFR 13.16 and 14 CFR Part 13, subpart G (14 CFR 13.201-13.235). Section 13.16 of Part 13 includes the procedures we follow when notifying a person, other than an individual acting as a pilot, flight engineer, mechanic or repairman, about alleged violations and proposed civil penalties, and for that person to use to request a hearing before a Department of Transportation (DOT) administrative law judge. The hearing process is governed by the regulations included in 14 CFR 13.16 and 14 CFR part 13, subpart G. Under these rules, the Administrator, acting in her capacity as the FAA decisionmaker, resolves any appeals of initial decisions rendered by an administrative law judge. See 14 CFR 13.16(j), 13.202 (definition of FAA decisionmaker), and 13.233(j).

We use 14 CFR 13.16 and 14 CFR Part 13, subpart G when assessing civil penalties not exceeding 49 U.S.C. 46301(d)(8)'s limits for violations arising from many different provisions of the Federal aviation statute. Specifically, we use these regulations when assessing civil penalties for violations of statutory provisions listed in the first sentence of 49 U.S.C. 46301(d)(2) or any of their implementing regulations. Under the first sentence of 49 U.S.C. 46301(d)(2), the Administrator may impose a civil penalty for violations of the following statutory provisions of any regulations implementing those provisions:

- (a) Chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117) of Title 49;
- (b) Chapter 441 (except section 44109) of Title 49;
- (c) Sections 44502(b) and (c) of Title 49;
- (d) Chapter 447 (except sections 44717 and 44719-44723) of Title 49;
- (e) Section 46301(b) of Title 49;
- (f) Section 46302 (for a violation relating to section 46504) of Title 49;
- (g) Section 46318 of Title 49;
- (h) Section 47107(b) of Title 49.

Many of the statutory provisions listed in the first sentence of 49 U.S.C. 56301(d)(2) are aviation safety-related. See e.g., 49 U.S.C. chapter 447, entitled "Safety Regulation," and 49 U.S.C. 46301(b) prohibiting tampering with smoke detectors; but see e.g., 49 U.S.C. 47107(b) conditioning the approval of airport development grant applications upon the receipt by the FAA of written assurances that local taxes on aviation fuel and public airport revenues will only be expended for certain purposes.

The procedural rules in 14 CFR 13.16 and 14 CFR part 13, subpart G, also apply when we assess a civil penalty not exceeding 49 U.S.C. 46301(d)(8)'s limits for violations of certain statutory provisions of the Federal aviation statute, or their implementing regulations, not listed in the first sentence of 49 U.S.C. 46301(d)(2). Persons who violate 49 U.S.C. 47528, 47529 or 47530, or any regulation issued under those sections, are subject to a civil penalty. Sections 47528 through 47530 of Title 49 prohibit the operation of certain aircraft when those aircraft do not comply with the Stage 3 noise levels (see 14 CFR part 91, subpart I). Section 47531 of Title 49 provides that a person violating one of those statutory provisions or implementing regulations

is subject to the same civil penalty amounts and procedures under chapter

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463 as a person violating section 44701(a) or (b) or any of sections 44702-44716 (which are listed in 49 U.S.C. 46301(D)(2)). When assessing civil penalties that do not exceed 49 U.S.C. 46301(d)(8)'s limitations, for violations of 49 U.S.C. 47528, 47529 or 47530, we use the procedures for notice and opportunity for a hearing on the record provided in 14 CFR 13.16 and 14 CFR part 13, subpart G.

In addition, under the Federal hazardous materials transportation statute, 49 U.S.C. 5123, and 49 CFR 1.47(k), the Administrator may assess a civil penalty against any person who knowingly violates the Federal hazardous materials transportation statute, 49 U.S.C. chapter 51, or any of its implementing regulations. Section 5123 of Title 49 does not limit the total civil penalty that the Administrator may assess for violations of the Federal hazardous materials transportation statute or its implementing regulations. The limitations set forth in 49 U.S.C. 46301(d)(8) do not apply in hazardous materials cases when the Administrator initiates civil penalty actions under the Federal hazardous materials transportation statute, 49 U.S.C. 5123, and 14 CFR 1.47(k). We use 14 CFR 13.16 and 14 CFR part 13, subpart G, when assessing civil penalties in cases involving the transportation of hazardous materials by air.

The FAA also issues enforcement orders that do not assess civil penalties. For example, we issue cease and desist orders under 14 CFR 13.20, and orders of compliance under 14 CFR 13.71-13.87. Requests for hearing from these proposed orders are filed in the Hearing Docket. The procedural rules in 14 CFR part 13, subpart D govern proceedings in these cases, in which requests for hearing are filed under 14 CFR 13.19(c)(5), 13.20(c), 13.20(d), 13.75(a)(2), 13.75(b) or 13.81(e).

This Rulemaking

1. We are updating 14 CFR 13.16 and 14 CFR part 13, subpart G in this rulemaking as follows.

a. The Applicability of 14 CFR 13.16 and 14 CFR part 13, subpart G.

In October 2004, we amended the civil penalty assessment procedure in 14 CFR part 13, including 14 CFR 13.16 and 14 CFR part 13, subpart G. 69 FR 59490, October 4, 2004. We explained in the preamble that we were amending section 13.16 to update the list of statutory provisions authorizing the FAA to assess civil penalties. 69 FR at 59493. We revised section 13.16 when assessing "a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic or repairman for a violation cited in 49 U.S.C. 46301(d)(2) or 47531." 69 FR at 59493 and 59496. We added a new section 13.16(c) for the administrative assessment of civil penalties against all persons for violations of 49 U.S.C. chapter 51, the Federal hazardous materials transportation statute. Further, we amended 14 CFR 13.201(a) to explain that 14 CFR part 13, subpart G applies to all civil penalty actions initiated under 14 CFR 13.16 in which a person requests a hearing.

The revision of section 13.16(a)--regarding the use of 14 CFR 13.16's procedures in civil penalty actions for violations cited in 49 U.S.C. 46301(d)(2) or 47531--appeared in the 2005 volume of the Code of Federal Regulations. However, the phrase "or 47531" did not appear in section 13.16(a) when the 2006 volume of the Code of Federal

Regulations was printed. We reiterate here that we use the procedures in 14 CFR 13.16 (and 14 CFR part 13, subpart G when a hearing is requested) when assessing civil penalties for violations of the statutory provisions cited in 49 U.S.C. 47531 or of any implementing rules, regulations or orders.

We are also amending section 13.16(a), as well as certain regulations in subpart G, to clarify that we use the procedures set forth in section 14 CFR 13.16 and part 13, subpart G, for violations of provisions of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d). The first sentence of 49 U.S.C. 46301(d)(2) authorizes the FAA Administrator to assess civil penalties for violations offering provisions of the Federal aviation statute. The second sentence sets forth the civil penalty assessment authority of the Secretary of Homeland Security.

b. Judicial review of final agency orders assessing a civil penalty for violations of the Federal aviation statute, the Federal hazardous materials transportation law, or any implementing rules, regulations or orders.

Judicial review of final agency orders assessing civil penalties for violations of the Federal aviation statute and its implementing regulations is available in the appropriate Federal court of appeals under 49 U.S.C. 46110. Under 49 U.S.C. 46110, a person affected by an order issued by the Administrator of the FAA under part A or part B, or section 114(l) or (s) of the Federal aviation statute, may file a petition for review of that order 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 person resides or has that person's principal place of business. Under 49 U.S.C. 46110(a), the petition for review must be filed not later than 60 days after the issuance of the order, unless a Federal court finds that reasonable grounds exist for the late-filing.

Judicial review of civil penalty orders issued under the Federal aviation statute is also provided under the following:

49 U.S.C. 46301(d)(7)(D)(iii) providing that judicial review of any order assessing a civil penalty for a violation of 49 U.S.C. 47107(b) or any grant assurance under that section for misuse of public airport revenues may be obtained only under 49 U.S.C. 46110;

49 U.S.C. 46301(g) providing that "[a]n order of the * * * Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title."

49 U.S.C. 47532 (and 49 CFR 1.47(s)) providing that an action taken by the Administrator under 49 U.S.C. 47528, 47529 or 47530 regarding the operation of certain aircraft not in compliance with stage 3 noise levels is subject to judicial review as provided under 49 U.S.C. 46110.

Before the enactment of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU) in 2005, the Federal hazardous materials transportation law, 49 U.S.C. chapter 51, was silent on the issue of judicial review of an order assessing a civil penalty. As a result, final agency orders assessing civil penalties in cases involving the transportation by air of hazardous materials were subject to review in the appropriate United States district court under 5 U.S.C. 701, et seq., and 28 U.S.C. 1331.

SAFETEA-LU added a new section 5127 to the Federal hazardous materials transportation statute, 49 U.S.C. 5127, pertaining specifically to judicial review of final orders. Section 5127 of Title 49 now provides that a person aggrieved by a final agency action

involving the transportation of hazardous materials may file a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States in the circuit which the party resides or has the party's principal place of business. Thus, under SAFETEA-LU, persons aggrieved by a final order issued by the Administrator arising from the transportation by air of a hazardous materials may petition the appropriate Federal court of appeals for review.

Under the new 49 U.S.C. 5127, a petitioner must file the petition for review no later than 60 days after the action "becomes final." 49 U.S.C. 5127 (emphasis added.) Decisions and orders

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in hazardous materials cases issued by the Administrator under 14 CFR 13.233(j)(2) (on appeal to the Administrator from a decision of an administrative law judge) and under 14 CFR 13.234(g) (on petition for reconsideration, rehearing or modification), are final when they are served. Therefore, a person filing a petition for review of an order issued under 14 CFR 13.233(j)(2) or 13.234(g) in a civil penalty case involving the transportation of hazardous materials must do so no later than 60 days after the Administration's decision is served. (See 14 CFR 13.235.)

Judicial review in civil penalty cases is discussed in the Federal Aviation Regulations at 14 CFR 13.16 and 13.235. Currently, section 13.16(m)(1) provides that a party may file a petition for review of a final agency order in cases under the Federal aviation statute in the appropriate United States court of appeals under 49 U.S.C. 46110(a), 46301(d)(6) and 46301(g). Section 13.16(m)(2) provides that in cases under the Federal hazardous materials transportation law, a party may seek judicial review of a final agency order in an appropriate United States district court under 5 U.S.C. 703 and 704 and 28 U.S.C. 1331.

Section 13.235 of the Federal Aviation Regulations also deals with the issue of judicial review of a final agency decision in civil penalty cases. Unlike 14 CFR 13.16(m), section 13.235 does not distinguish between cases arising under the Federal aviation statute and cases arising under the Federal hazardous materials transportation statute. It is stated in 14 CFR 13.235: "A person may seek judicial review of a final decision and order of the Administrator as provided in section 1006 of the Federal Aviation Act of 1958, as amended [currently 49 U.S.C. 46110]." Currently, section 13.235 does not include references to sections 5127, 46301(d)(7)(D)(iii), 46301(g), or 47532 of Title 49, which also provide for judicial review of final agency orders involving certain violations of the Federal hazardous materials transportation statute and the Federal aviation statute.

We are amending 14 CFR 13.16(m) and 14 CFR 13.235 to incorporate SAFETEA-LU's changes regarding judicial review of final agency decisions in hazardous materials cases, as now set forth in 49 U.S.C. 5127, as well as to include references to other statutory provisions for judicial review. In this rulemaking, we are dividing section 13.235 into four paragraphs for the sake of clarity. New paragraph (a) provides that 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. New paragraph (b) explains that judicial review in cases under the Federal hazardous materials transportation statute is under 49 U.S.C. 5127. New paragraph

(c) provides that parties seeking review of a final agency order 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. New paragraph (d) explains that the party seeking review must file the petition for review no later than 60 days after service of the Administrator's final decision and order.

Since the passage of SAFETEA-LU, there is no need to divide 14 CFR 13.16(m) into paragraphs (1) and (2) because review is now available in the appropriate Federal court of appeals for civil penalty orders arising from violations of the Federal aviation statute and the Federal hazardous materials transportation law. The new section 13.16(m) provides that a party may seek judicial review of a final decision and order of the Administrator involving a violation of the Federal aviation statute or the Federal hazardous materials transportation law. It explains that review is in the United Court of Appeals for the District of Columbia Circuit or the courts of appeals of the United States for the circuit in which the party resides or has the party's principal place of business. It refers the reader to 14 CFR 13.235 for references to the provisions in Title 49 of the United States Code for judicial review.

Currently, section 13.16(m)(1) cites 49 U.S.C. 46301(d)(6), as well as 49 U.S.C. 46110 and 46301(g), as authority for the availability of judicial review in an appropriate Federal court of appeals. Section 46301(d)(6) of Title 49 provides for judicial review of orders of the National Transportation Safety Board in civil penalty cases under 49 U.S.C. 46301(d)(5) against individuals acting as pilots, flight engineers, mechanics or repairment. (See 14 CFR 13.18(h)). Section 13.16, however, deals with orders of the FAA Administrator in civil penalty proceedings against persons other than individuals acting as pilots, mechanics, flight engineers or repairmen. Consequently, we are not including a reference to 49 U.S.C. 46301(d)(6) in the new 14 CFR 13.16(m) or in the amended section 13.235.

We are amending the authority section of 14 CFR part 13 to include the statutory provisions added to Title 49 regarding the transportation of hazardous materials by SAFETEA-LU.

c. Current Hearing Docket Address. Last year, we amended 14 CFR, part 13, subpart G, to provide the new address of the FAA Hearing Docket. 70 FR 8236, February 18, 2005. Since publishing that notice, the offices in the Wilbur Wright Building, in which the Hearing Docket is now located, have been re-numbered. Under the current room number system, the Hearing Docket is located in Suite 2W1000. We are updating the suite number for the Hearing Docket in this rulemaking.

d. FAA Civil Penalty Adjudication Web site. Also, by notice published on February 18, 2005, we amended section 13.210 by adding paragraph (e), which included information about the FAA civil penalty adjudication Web site. The FAA's Web site recently has been revised. The FAA civil penalty adjudication Web site is now located at the following address:

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

This technical amendment provides the current Internet address for the FAA civil penalty adjudication Web site, as well as more complete description of the information available on the Web site.

e. Definition of Complaint. As defined in 14 CFR 13.202, a "complaint" is a document that is filed by the agency attorney after a hearing is requested under 14 CFR 13.16. In 2004, we redesignated the

paragraphs in 14 CFR 13.16 about requests for hearing as 14 CFR 13.16(f)(3) and (g)(2)(ii). 69 FR at 59496. Now, we are amending the definition of "complaint" in section 13.202 to replace references to the former paragraph numbers about requests for hearing with the current citations, 14 CFR 13.16(f)(3) and (g)(2)(ii).

f. Recodification of the FAA's Governing Statute and the Hazardous Materials Transportation Act. In 1994, Congress recodified into positive law the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, and other pieces of transportation law. We amended the authority sections for the Federal Aviation Regulations, including Part 13, to reflect the recodification, by final rule published on December 28, 1995 (60 FR 67254). Now, we are amending 14 CFR 13.202 (definitions of "complaint" and "order assessing civil penalty"), 13.218(f)(1), 13.219(a), 13.228(c), and 13.235 to replace out-of-date statutory references with citations to the Federal aviation statute, and to the Federal hazardous materials transportation statute.

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2. We are updating other sections of Part 13 of the Federal Aviation Regulations, as follows:

a. Civil penalties, generally, under 14 CFR 13.14.

Section 13.14(a) of the Federal Aviation Regulations, 14 CFR 13.14(a) explains that a person who violates certain provisions of the Federal aviation statute or any implementing rule, regulation, or order, is subject to a civil penalty not exceeding the amount specified in 49 U.S.C. chapter 463 for each violation. Section 13.14(a) should include those sections listed in the first sentence of 49 U.S.C. 46301(d)(2) and in 49 U.S.C. 47531.

Currently, 14 CFR 13.14(a)(6) provides that a person is subject to a civil penalty for a violation of 49 U.S.C. 46301(b), 46302, 46303, 46318 or 46319. Section 13.14(a)(6) needs revision in three respects. First, under 49 U.S.C. 46301(d)(2), the Secretary of Homeland Security--not the Administrator of the FAA--has the authority to assess civil penalties for violations of 49 U.S.C. 46303. Consequently, a reference to 49 U.S.C. 46303 does not belong in 14 CFR 13.14(a)(6).

Second, under 49 U.S.C. 46319(c), a public agency is liable for a civil penalty of \$10,000 for each day that an airport remains closed without having given the FAA the notice required under 49 U.S.C. 46319(a). Congress, however, failed to specify in 49 U.S.C. 46301(d)(2) or anywhere else in the Federal aviation statute, that the Administrator has the authority to assess a penalty for violations of 49 U.S.C. 46319. As a result, a reference to 49 U.S.C. 46319 should not be included in 14 CFR 13.14(a)(6). In this rulemaking, we are deleting the reference to 49 U.S.C. 46319.

Third, the Administrator of the FAA has the authority to assess civil penalties for violations of 49 U.S.C. 46302 for a violation relating to 49 U.S.C. 46504, and the Secretary of Homeland Security has the authority to assess civil penalties for other violations of 49 U.S.C. 46302. For this reason, we are adding a parenthetical after "section 46302" in 14 CFR 13.14(a)(6) as follows: "(For a violation relating to 49 U.S.C. 46504.)" As a result of these changes, 14 CFR 13.14(a)(6), as amended by this rulemaking, will read: "Any person who violated any of the following statutory provisions, or any rule, regulation or order issued thereunder is subject to a civil penalty * * * (6) Sections 46301(b), 46302 (for a violation relating to 49 U.S.C.

46504), or 46318." We are also adding the parenthetical "(for a violation relating to 49 U.S.C. 46504)" after "49 U.S.C. 46302" in the statutory authority section of Part 13.

The Administrator may assess a civil penalty for a violation of 49 U.S.C. 47107(b) under the first sentence of 49 U.S.C. 46301(d)(2). We inadvertently omitted 49 U.S.C. 47107(b) when we drafted 14 CFR 13.14. We are correcting that omission in this rulemaking by adding a new section 13.14(a)(7), regarding a violation of 49 U.S.C. 47017(b). We are redesignating the current section 13.14(a)(7) as section 13.14(a)(8).

We also did not include 49 U.S.C. 47107 in the authority section of Part 13. We are correcting that oversight in this rulemaking.

b. Providing the correct address for the Hearing Docket in the procedural rules in 14 CFR part 13, subpart D.

Under Part 13 of the Federal Aviation Regulations, we also issue enforcement orders not involving the assessment of civil penalties. For example, under 14 CFR 13.20, we issue cease and desist orders and orders of denial, and under 14 CFR 13.71-13.87, we issue orders of compliance and orders of immediate compliance involving the transportation of hazardous materials by air. If a recipient of a proposed order (or an order of immediate compliance) requests a hearing under 14 CFR 13.19(c)(5), 13.20(c), 13.20(d), 13.75(a)(2), 13.75(b) or 13.81(e), the proceedings are governed by the rules contained in 14 CFR part 13, subpart D (14 CFR 13.31-13.63).

In proceedings conducted under 14 CFR part 13, subpart D, the parties should file documents, including the request for hearing and the pleadings, in the Hearing Docket. See 14 CFR 13.35 and 13.43. The address of the Hearing Docket is provided in 14 CFR 13.35, which is the rule pertaining to requests for hearing. Section 13.35 sets forth the Hearing Docket's old address. The Hearing Docket's current street address is as follows: Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building--Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430. When a party hand-delivers or sends documents by commercial expedited courier (e.g., Federal Express or United Parcel Service), the party should use the street address.

The Wilbur Wright Building, in which the Hearing Docket is located, does not have a mailroom. Documents delivered by the U.S. Postal System must be sent to, and processed by, the mailroom located in the FAA headquarters building, at 800 Independence Avenue, SW. When sending documents to the Hearing Docket by U.S. mail or U.S. certified mail, the following mailing address should be used (instead of the street address): Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430, Wilbur Wright Building--Suite 2W1000. We are amending 14 CFR 13.35 to include the correct street and mailing addresses for the Hearing Docket.

Procedure Matters

In general, under the Administrative Procedure Act, 5 U.S.C. 553, agencies must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary due to the administrative nature

of the changes. The public interest is served by revising section 13.16 and section 13.235 immediately to inform parties in hazardous materials civil penalty cases of the availability of judicial review in the appropriate Federal court of appeals under SAFETEA-LU. It is in the public interest that the revisions to 14 CFR 13.35 and 13.210 take effect promptly so that parties filing documents in proceedings under either subpart D or subpart G of part 13 of the Federal Aviation Regulations use the Hearing Docket's correct street or mailing address. Also, it is in the public interest that the Rules of Practice correctly state the Internet address for the FAA civil penalty adjudication Web site. The editorial amendments to bring the citations to the Federal Aviation Act of 1958, as amended, and to the Hazardous Materials Transportation Act into conformity with the recodification of the transportation laws and Part 13's revised authority citation will be helpful to the public and do not warrant notice and comment. The amendments set forth in this notice do not affect the rights or duties of any regulated entity.

List of Subjects in 14 CFR Part 13

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

The Amendments

Accordingly, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations as follows:

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PART 13--INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121-5128, 40113-40114, 44103-44106, 44702-44703, 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 1.47.

2. Amend Sec. 13.14 by revising Sec. 13.14(a)(6), redesignating the current Sec. 13.14(a)(7) as new Sec. 13.14(a)(8), and adding a new Sec. 13.14(a)(7), to read as follows:

Sec. 13.14 Civil penalties: General.

(a) * * *

(6) Sections 46301(b), 46302 (for a violation of 49 U.S.C. 46504), or 46318;

(7) Section 47107(b); or

* * * * *

3. Revise Sec. 13.16(a) and Sec. 13.16(m) to read as follows:

Sec. 13.16 Civil Penalties: Administrative assessment against a

person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.

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

* * * * *

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

* * * * *

4. Amend Sec. 13.35 by revising paragraph (a), redesignating current paragraphs (b) and (c) as (c) and (d), and adding a new paragraph (b), to read as follows:

Sec. 13.35 Request for hearing.

(a) A request for hearing must be made in writing and filed in the Hearing Docket.

(1) If delivery is in person, or by expedited courier service. A person delivering the request for hearing in person or sending the request for hearing by commercial expedited courier (for example, Federal Express or United Parcel Service), should use the following address: Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building--Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430.

(2) If delivery is by U.S. Mail: If the request for hearing is sent by U.S. Mail, then it should be addressed as follows: Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591: Attention: Hearing Docket Clerk, AGC-430, Wilbur Wright Building--Suite 2W1000.

(b) The request for hearing must describe the action proposed by the FAA, and must contain a statement that a hearing is requested. A copy of the request for hearing and a copy of the answer required by paragraph (c) of this section must be served on the official who issued the notice of proposed action.

* * * * *

5. Amend Sec. 13.202 by revising the definition of "complaint" and the first sentence of the definition of "order assessing civil penalty" to read as follows:

Sec. 13.202 Definitions

* * * * *

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 Hearing Docket after a hearing has been requested under Sec. 13.16(f)(3) or (g)(2)(ii) of this part.

* * * * *

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. * * *

* * * * *

6. Amend Sec. 13.210 by revising paragraphs (a)(1) and (2) and (e)(2) to read as follows:

Sec. 13.210 Filing of documents.

(a) * * *

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

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

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(e) * * *

(2) Decisions and orders issued by the Administrator in civil penalty cases, indexes of decisions, contact information for the FAA Hearing Docket, and the administrative law judges, the rules of practice, and other information is available on the FAA civil penalty adjudication Web site at:

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

7. Amend Sec. 13.218 by revising the third sentence of paragraph (f)(1) to read as follows:

Sec. 13.218 Motions.

* * * * *

(f) * * *

(1) * * * 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.

8. Amend Sec. 13.219 by revising the second sentence of paragraph (a) to read as follows:

Sec. 13.219 Interlocutory appeals.

(a) * * * 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 Sec. 13.235 of this subpart.

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9. Revise Sec. 13.228(c) to read as follows:

Sec. 13.228 Subpoenas.

* * * * *

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

10. Revise Sec. 13.235 to read as follows:

Sec. 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.

Issued in Washington, DC, on November 28, 2006.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

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