

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 shall 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.

[Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended by Amdt. 13-32; 69 FR 59498, Oct. 4, 2004; 70 FR 13345, Mar. 21, 2005]

§ 13.234 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party shall file a petition to reconsider or modify with the FAA decisionmaker not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and shall serve a copy of the petition on each party. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge

that has not been appealed by any party to the FAA decisionmaker.

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

(c) *Contents.* A party shall state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support, the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party shall describe these allegations and shall describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party shall set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party shall explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

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

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

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

to reconsider or modify within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

[Amdt. 13-21, 55 FR 27575, July 3, 1990; 55 FR 29293, July 18, 1990; Amdt. 13-23, 55 FR 45983, Oct. 31, 1990]

§ 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.

[Doc. No. FAA-2006-26477, 71 FR 70465, Dec. 5, 2006]

Subpart H—Civil Monetary Penalty Inflation Adjustment

SOURCE: Docket No. 28762, 61 FR 67445, Dec. 20, 1996, unless otherwise noted.

§ 13.301 Scope and purpose.

(a) This subpart provides a mechanism for the regular adjustment for inflation of civil monetary penalties in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, April 26, 1996,

in order to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law. This subpart also sets out the current adjusted maximum civil monetary penalties or range of minimum and maximum civil monetary penalties for each statutory civil penalty subject to the FAA's jurisdiction.

(b) Each adjustment to the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, made in accordance with this subpart applies prospectively from the date it becomes effective to actions initiated under this part, notwithstanding references to a specific maximum civil monetary penalty or range of minimum and maximum civil monetary penalties contained elsewhere in this part.

§ 13.303 Definitions.

(a) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law or has a maximum amount provided by Federal law;

(2) Is assessed or enforced by the FAA pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

(b) *Consumer Price Index* means the Consumer Price Index for all urban consumers published by the Department of Labor.

§ 13.305 Cost of living adjustments of civil monetary penalties.

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

(1) Multiple of \$10 in the case of penalties less than or equal to \$100;