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FAA IMPLEMENTS CHANGES TO PART 13 OF THE FEDERAL AVIATION REGULATIONS DEALING WITH CIVIL PENALTY ACTIONS



\$400,000.

The full text of the revisions made by the FAA to Part 13 is published in 69 Federal Register 59490 (Docket No. 27854, Amendment 13-32). The

Although Congress authorized the FAA to seek civil penalties that would be adjudicated by the NTSB against pilots, flight engineers, mechanics, or repairmen, the FAA has only recently published revisions to Part 13 of the Federal Aviation Regulations to implement this authority. Additionally, while the FAA could only seek a civil penalty in an administrative tribunal up to a limit of \$50,000, it is now possible for the FAA to assess a civil penalty administratively up to

publication posted by the FAA in the Federal Register is a Final Rule that took effect on November 3, 2004. Other comments about the Final Rule are discussed in the numbered paragraphs below:

1. The Final Rule is ostensibly published pursuant to Public Law 108-176 enacted December 12, 2003, entitled "Vision 100 – Century of Aviation Reauthorization Act."

2. While the FAA will be authorized to seek, on an administrative basis, civil penalties of up to \$400,000, the maximum civil penalty the FAA may seek against an individual or a small business concern in an administrative tribunal will remain \$50,000.
3. The FAA's Notice of Proposed Rule-Making ("NPRM") which precedes the Final Rule was published nearly ten years ago.
4. In publishing the Final Rule, the FAA disposed of comments made to the NPRM issued on July 29, 1994, and published on August 5, 1994, at 59 Federal Register 40192.
5. The FAA has noted that Congress set the maximum civil penalty of \$25,000 for certain violations involving the interference with the functions of a crewmember.
6. The FAA noted that the NTSB has adopted a rule extending the six-month stale complaint rule to civil penalty actions against pilots, flight engineers, mechanics, and repairmen. See 59 Federal Register 59050, 59051-59052 (November 24, 1994).
7. For purposes of the jurisdiction of the FAA to issue a civil penalty, it is not necessary that the person actually hold an airman's certificate, a flight engineer's certificate, a mechanic's certificate, or a repairman's certificate if the person in question is "acting as" a person exercising those privileges.
8. In disposing of comments to the Final Rule, the FAA took the position that an





inspection authorization held by a mechanic is different from a flight instructor's certificate held by a pilot. Also, the FAA took the position that the mere fact that a person holds an airman's certificate, a flight engineer's certificate, a mechanic's certificate, or a repairman's certificate will not be sufficient to vest jurisdiction in the NTSB unless the person was exercising the privileges of those certificates. Otherwise, one can anticipate that jurisdiction will not be before the NTSB, but rather will be before the Department of Transportation Office of Administrative Law Judges and the FAA, itself.

9. Section 13.16(a) is instructive for lawyers who handle appeals of adverse civil penalty decisions. While airmen have historically appealed an adverse finding made by the NTSB to a United States Circuit Court of Appeals, the FAA has declared that with reference to hazardous materials cases (which do not involve pilots, mechanics, engineers, or repairmen), the appellate tribunal is not the United States Circuit Court of Appeals, but is a United States District Court. In support of this position, the FAA has cited 5 U.S.C. § 701 and 28 U.S.C. § 1331. This declaration by the FAA that appeals from adverse administrative decisions involving hazardous materials cases is important to preclude the appeal being lodged with the wrong court.

10. Citing 49 U.S.C. § 46301 (d)(5)(a), the FAA has published Section 13.18 of the FARs. Section 13.18 outlines procedures familiar

to aviation lawyers whereby the FAA issues a Notice of Proposed Civil Penalty, offers the responding party the opportunity to participate in an informal conference, affords the responding party the ability to appeal from a Notice of Proposed Civil Penalty to the NTSB, authorizes the FAA attorney to compromise the case, requires that any payment be made in settlement or satisfaction of a case within 30 days, and creates a mechanism whereby the FAA transfers any delinquent debt to the Department of Treasury for collection pursuant to the Debt Collection Act of 1996.

In summary, the new procedures outlined in the Final Rule took effect on November 3, 2004. These new procedures authorize the FAA to collect civil penalties, administratively, of up to \$400,000 except with respect to individuals and small business entities. Also, despite a delay of ten years, the FAA has now implemented procedures for the assessment of civil penalty cases

against pilots, flight engineers, mechanics and repairmen, these cases being adjudicated by the NTSB. We at Flightwatch appreciate Mark McDermott, Esq., of Joseph, McDermott, & Reiner, P.C. in Washington, D.C. calling this new development in aviation litigation to our attention.

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