

# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-22]

#### Rules of Practice for FAA Civil Penalty Actions

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** In a final rule issued in June 1990, the FAA adopted a 2-year limitations period that applies to civil penalty actions brought under the agency's general assessment authority. The rule provides for dismissal of a civil penalty action in which a notice of proposed civil penalty was issued more than two years after an alleged violation. The preamble to the rule made it clear that this limitations period applied to actions in which an alleged violation occurred on or after the effective date of the June 1990 final rule. This amendment clarifies the limitations period by expressly providing that the 2-year limitations period does not apply to actions alleging a violation that occurred before the effective date of the June 1990 final rule. This action will ensure that the rule accurately reflects the intended applicability of the limitations period to future civil penalty actions brought under the agency's general assessment authority.

**EFFECTIVE DATE:** August 2, 1990.

**FOR FURTHER INFORMATION CONTACT:** Denise Daniels Ross, Special Counsel to the Chief Counsel (AGC-3), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3773.

#### SUPPLEMENTARY INFORMATION:

##### Availability of the Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of this final rule. Persons interested in being placed on the mailing list for future notices of proposed rulemaking also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

##### Background

In a notice of proposed rulemaking (NPRM) issued on April 17, 1990, the FAA specifically solicited comment regarding an appropriate limitations period that would apply to civil penalty actions (1) not exceeding \$50,000 for a violation of the Federal Aviation Act of 1958, or of any rule, regulation, or order issued thereunder; and, (2) regardless of amount, for a violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder. 55 FR 15134, 15135-15136; April 20, 1990. On June 27, 1990, the FAA issued a final rule revising the initiation procedures and the rules of practice for civil penalty actions, and adopted a 2-year limitations period that applies to civil penalty actions initiated under the agency's general assessment authority. 55 FR 27548; July 3, 1990.

Pursuant to the limitations period, the FAA is generally required to issue a notice of proposed civil penalty within two years from the date of an alleged violation in all cases initiated under its general assessment authority. The FAA inserted the limitations period in § 13.208(d) of the rules of practice so that it was clearly set forth in the rules. The FAA also amended § 13.209 of the rules so that it was clear that, instead of filing an answer to a complaint, a respondent may file a motion to dismiss allegations in a complaint or the entire complaint based on the limitations period in § 13.208. Also, as several commenters suggested in response to the NPRM, the FAA adopted a "good cause" standard that, on a case-by-case basis, enables an administrative law judge to excuse reasonable or justified

delay in the agency's notification to a respondent.

In the preamble to the final rule, the FAA explained that the limitations period applies only prospectively.

Finally, the limitations period provided in § 13.208(d) applies only to those violations alleged to have occurred on or after the effective date of this final rule. The adoption of this time limit should not serve as a defense to (1) respondents who have already received a notice of proposed civil penalty for violations alleged to have occurred more than two years before issuance of the notice; or (2) those respondents who may receive a notice in the future, unless the violation is alleged to have occurred on or after the effective date of this rule and more than two years passed before the issuance of a notice of proposed civil penalty. [Emphasis added.]

55 FR at 27556-27557; July 20, 1990. Although the preamble to the final rule clearly stated the prospective applicability of the limitations period, § 13.208(d) as adopted in June 1990 did not so expressly state. Although the intent of the applicability of limitations period was evident from the preamble to the rule that established it, the FAA is amending § 13.208(d) so that it clearly states that allegations contained in a complaint must have occurred on or after August 2, 1990. The 2-year limitations period does not apply to actions alleging a violation that occurred before the effective date of the June 1990 final rule. Those actions continue to be subject to the general 5-year statute of limitations for proceedings for the enforcement of any civil fine or penalty. 28 U.S.C. 2462.

This amendment is intended to avoid needless confusion or unnecessary argument about the applicability of the limitations period so that future civil penalty proceedings will not be unduly delayed. This minor clarification does not alter the ability of a respondent to submit the motion to dismiss, based on a failure by the FAA to issue a notice of proposed civil penalty in a timely manner, that was provided in the rule as adopted in June 1990. See § 13.208(d). However, to the extent the clarification eliminates confusion regarding the applicability of this section, the amendment will promote consistent implementation of the rules of practice.

##### Effective Date of the Final Rule

This action is a minor clarification of a final rule issued on June 27, 1990, to

coincide with the effective date of that rule on August 2, 1990. This amendment will convey more accurately the agency's intent, as expressed in the preamble to the June 1990 final rule, and will not place any new restriction or requirement on persons or entities involved in a civil penalty action. The FAA specifically solicited comment on the issue of an appropriate limitation period, and the applicability of any period adopted by the agency, in an NPRM issued in April 1990. Because this amendment is a minor technical amendment, because public comment was solicited on the subject of the amendment in an NPRM, and because an additional period for comment would unduly delay the adoption and implementation of this clarifying rule, the FAA finds that further notice and opportunity for public comment under the Administrative Procedure Act (5 U.S.C. 553(d)) are unnecessary.

It is important that this clarifying amendment be effective at the same time that the civil penalty initiation procedures and the general rules of practice become effective, on August 2, 1990, to avoid public misunderstanding of procedural requirements. The FAA believes that adoption of this clarifying amendment on August 2, 1990 will ensure consistent interpretation of the applicability of the final rule and will conserve the resources of the parties and the adjudicators in civil penalty actions initiated pursuant to the agency's assessment authority. Accordingly, the FAA finds that good cause exists for making this amendment effective less than 30 days after publication in the Federal Register.

#### Conclusion

For the reasons stated above, the FAA has determined that this final rule is not a major action under the criteria of Executive Order 12291 and is not a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The FAA also has determined that this action does not warrant further preparation of a regulatory evaluation, particularly because the action will have no impact on, or economic consequences to, persons or entities involved in civil penalty actions initiated pursuant to the agency's general assessment authority.

For the same reasons, the FAA certifies that the clarifying amendment adopted herein will not have a significant economic impact, positive or negative, on a substantial number of small entities, as those terms are defined in the Regulatory Flexibility Act of 1980. There also will be no impact on

trade opportunities for U.S. firms operating outside the United States or foreign firms operating within the United States. Moreover, this amendment will not have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this amendment does not have sufficient Federalism implication to warrant preparation of a Federalism assessment.

#### List of Subjects in 14 CFR Part 13

Enforcement procedures,  
Investigations, Penalties.

#### The Amendment

Accordingly, the FAA amends part 13 of the Federal Aviation Regulations (14 CFR part 13) as follows:

#### PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401-1406, 1421-1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1481-1489, 1523 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1471(a)(3) (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); 49 U.S.C. App. 1475 (Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act, as revised, 49 U.S.C. 106(g)); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR § 1.47 (f), (k), and (g) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.208 is amended by revising paragraph (d) to read as follows:

#### § 13.208 Complaint.

\* \* \* \* \*

(d) *Motion to dismiss allegations or complaint.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred on or after August 2, 1990, and more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

\* \* \* \* \*

Issued in Washington, DC on July 27, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-17895 Filed 7-27-90; 1:46 pm]

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# Corrections

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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#### 14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-22]

#### Rules of Practice for FAA Civil Penalty Actions

##### *Correction*

In rule document 90-17895 beginning on page 31175 in the issue of Wednesday, August 1, 1990, make the following correction:

On page 31176, in the second column, in the authority citation for part 13, in the next-to-last line "(g)" should read "(q)".

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