

communications between FAA employees who participate as parties to a hearing pursuant to 16.203(b) of this part and other parties to a hearing.

*Hearing officer* means an attorney designated by the Deputy Chief Counsel in a hearing order to serve as a hearing officer in a hearing under this part. The following are not designated as hearing officers: the Chief Counsel and Deputy Chief Counsel; the Regional or Center Counsel and attorneys in the FAA region or center in which the noncompliance has allegedly occurred or is occurring; the Assistant Chief Counsel and attorneys in the Airports and Environmental Law Division of the FAA Office of the Chief Counsel; and the Assistant Chief Counsel and attorneys in the Litigation Division of the FAA Office of Chief Counsel.

*Initial decision* means a decision made by the hearing officer in a hearing under subpart F of this part.

*Mail* means U.S. first class mail; U.S. certified mail; and U.S. express mail. Unless otherwise noted, mail also means electronic mail containing PDF copies of pleadings or documents required herein.

*Noncompliance* means anything done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

*Party* means the complainant(s) and the respondent(s) named in the complaint and, after an initial determination providing an opportunity for hearing is issued under § 16.31 and subpart E of this part, the agency.

*Person* in addition to its meaning under 49 U.S.C. 40102(a)(33), includes a public agency as defined in 49 U.S.C. 47102(a)(15).

*Personal delivery* means same-day hand delivery or overnight express delivery service.

*Respondent* means any person named in a complaint as a person responsible for noncompliance.

*Sponsor* means:

(1) Any public agency which, either individually or jointly with one or more other public agencies, has received Federal financial assistance for airport development or planning under the Federal Airport Act, Airport and

Airway Development Act or Airport and Airway Improvement Act;

(2) Any private owner of a public-use airport that has received financial assistance from the FAA for such airport; and

(3) Any person to whom the Federal Government has conveyed property for airport purposes under section 13(g) of the Surplus Property Act of 1944, as amended.

*Writing or written* includes paper documents that are filed and/or served by mail, personal delivery, facsimile, or email (as attached PDF files).

[Doc. No. 27783, 61 FR 54004, Oct. 16, 1996, as amended at Amdt. 16-1, 78 FR 56141, Sept. 12, 2013]

#### § 16.5 Separation of functions.

(a) Proceedings under this part, including hearings under subpart F of this part, will be prosecuted by an agency attorney.

(b) After issuance of an initial determination in which the FAA provides the opportunity for a hearing, an agency employee engaged in the performance of investigative or prosecutorial functions in a proceeding under this part will not, in that case or a factually related case, participate or give advice in an initial decision by the hearing officer, or a final decision by the Associate Administrator or designee on written appeal, and will not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the hearing officer, the Associate Administrator on written appeal, or agency employees advising those officials in that capacity.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation advises the Associate Administrator regarding an initial decision, an appeal, or a final decision regarding any case brought under this part.