

SERVED: June 25, 2020

**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC**

In The Matter Of:)	
)	Docket No. FAA-2013-0716
TYLER PENNYWITT)	
)	Case No. 2012SO150128
Respondent)	

ORDER TEMPORARILY MODIFYING FILING AND SERVICE

REQUIREMENTS TO INCLUDE VOLUNTARY USE OF EMAIL

It is well-established that “[i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business...when in a given case the ends of justice require it.” *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 538 (1974). When the court relaxes or modifies a procedural rule, the court must cogently explain why it has exercised its discretion. *Husteel Co., Ltd. v. United States*, 98 F. Supp. 3d 1315, 1331 (Ct. Intl. Trade 2015). A party who objects and seeks to overturn a discretionary decision by the court to relax a regulation concerning notice must show substantial prejudice. *PAM S.p.A. v. U.S.*, 463 F.3d 1345, 1349 (Fed. Cir. 2006); *Suntec Industries Co., Ltd. v. United States*, 37 ITRD 3004 (Ct. Intl. Trade 2016), *aff’d*, 857 F.3d 1363 (Fed. Cir. 2017) (prejudice . . . means injury to an interest that the statute, regulation, or rule in question was designed to protect).

A. Basis for Temporary Modification

The United States is currently responding to a pandemic coronavirus disease, identified specifically as COVID-19. There is currently no vaccine for the COVID-19 virus. In response to this public health emergency, the Centers for Disease Control and Prevention, as well as other public health and medical authorities, have urged employers to “prepare for disruption in their business as well as prepare to protect their employees’ health and safety in the workplace.” <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-small-business.html>. Medical experts are advising and urging government officials, private business owners, and individuals

throughout the country to take specific precautions to reduce the possibility of exposure to, and spread of, COVID-19. These precautions include changing the manner in which work is conducted, expanding telework opportunities, promoting physical distancing, and utilizing other mitigation efforts in an effort to slow the spread of the disease. In response to this advice, and to limit physical exposure to a pandemic disease, a majority of individuals are now working from home on computers, away from where business mail is normally offered and/or accepted. As of the date of this Order, there are cautious plans to reopen certain government offices and private businesses, but such reopening plans remain subject to limitation, as COVID-19 continues to spread. As a result, a majority of individuals will continue to work from home for the foreseeable future.

B. Conclusion

Because of the COVID-19 pandemic, the filing and service requirements in 14 C.F.R. Part 13, Subpart G proceedings should be temporarily modified in the interests of public health and justice, to include the voluntary use of email. Such temporary modification should remain effective until further court order. Pursuant to 14 C.F.R. § 13.205, and after reviewing all relevant caselaw, regulations, statutory authority, and being fully advised;

IT IS HEREBY ORDERED:

1. Effective immediately, the filing and service requirements in 14 C.F.R. Part 13, Subpart G proceedings are temporarily modified to include the voluntary use of email.
2. Effective immediately, a party may voluntarily use email in FAA civil penalty proceedings as an appropriate method to file litigation documents with the Judge and the FAA Hearing Docket,¹ in lieu of, or in addition to, using the other filing and service methods found in 14 C.F.R. part 13, subpart G.
3. Effective immediately, a party may also choose to receive and accept service of litigation documents by email. A party who chooses to accept service by email must file and serve a Notice of Consent ("Notice") either within a Request for Hearing, a Complaint, or in a

¹ A litigant must contemporaneously file its materials with both the designated hearings judge and the FAA's docket clerk. *See*, 14 C.F.R. § 13.207(a) (a litigant must sign documents "tendered for filing with the hearing docket clerk, the administrative law judge, the FAA decisionmaker on appeal, or served on each party.") This is in accord with general federal litigation practice, which requires filing with the decision maker and the records clerk, with service on each party. *See, e.g.*, Fed. R. Civ. P. 3, 4, 5, 5.2 and 6.

separate document, which provides the party's consent to email service. The Notice should provide the party's email address for service. It may be filed by email. It may also be served by email, if the opposing party agrees to such service. The party's Notice will remain effective until the party files and serves a written Withdrawal of Notice or until further order of the court.

4. Any document(s) filed or served by voluntary email must be attached as a Portable Document Format ("PDF") file to an email message. A Certificate of Service should be included as part of the PDF attachment.
5. This Court's email address is M20.HrgDocs@dot.gov. This email address must be used *only* for the filing of litigation documents with the Judge.
6. The FAA Hearing Docket Clerk's email address is 9-AGC-FAA-HearingDocket@faa.gov. This email address must be used *only* for filing litigation documents intended to be included in the FAA's official record of this matter.
7. Assuming successful email transmission, the date of filing or service by email is determined by the date and time the party sends the email message.
8. The use of email for filing and service is voluntary. A party who does not wish to voluntarily consent to, and use email for filing and service must continue to file and serve documents by mail or personal delivery as described in 14 C.F.R. Part 13, Subpart G.
9. This temporary modification of the filing and service requirements, which allows email filing and service, shall remain effective until further court order.
10. A party who chooses to use email as a method for filing and service in FAA civil penalty proceedings must still comply with any court order directing the party to provide the Judge with a courtesy printed copy of materials.
11. For procedural questions with regard to this Order, please contact Mr. Charles Boebinger, Judicial Staff Assistant, at the Office of Hearings (202-366-2132).



Judge J. E. Sullivan
U.S. Administrative Law Judge

Attachment: Service List

SERVICE LIST

BY EMAIL

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Attention: Hearing Docket Clerk, AGC-430
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² Service was by U.S. Mail. For service in person or by expedited courier, use the following address: Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430.