

**FEDERAL
AVIATION
REGULATIONS**

PART 13

ENFORCEMENT PROCEDURES

CONSOLIDATED REPRINT

This consolidated reprint incorporates
Changes 1 through 6.

Federal Aviation Agency



Title 14—Aeronautics and Space
Chapter 1—Federal Aviation Administration
Department of Transportation
Subchapter B—Procedural Rules
Part 13—Enforcement Procedures

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Title 14, Chapter I
Code of Federal Regulations
ADOPTION OF SUBCHAPTER B

Adopted: September 25, 1962

Effective: November 10, 1962

This amendment adds Subchapter B "Procedural Rules" [New] to Chapter I of Title 14 of the Code of Federal Regulations. The amendment is a part of the program of the Federal Aviation Agency to recodify its regulatory material into a new series of regulations called the "Federal Aviation Regulations" to replace the present "Civil Air Regulations" and "Regulations of the Administrator."

During the life of the recodification project, Chapter I of Title 14 may contain more than one Part bearing the same number. To differentiate between the two, the recodified Parts, such as the ones in this subchapter, will be labeled "[New]". The label will of course be dropped at the completion of the project as all of the regulations will be new.

Subchapter B [New] was published as a notice of proposed rule making in the Federal Register on June 14, 1962 (27 F.R. 5686) and as Draft Release 62-27.

A part of the comments received recommended specific substantive changes to the regulations. Although some of these recommendations might, upon further study, appear to be meritorious, they cannot be adopted as a part of the recodification program. The purpose of the program is simply to streamline and clarify present regulatory language and to delete obsolete or redundant provisions. To attempt substantive changes in the recodification of these regulations (other than minor, relaxatory ones that are completely noncontroversial) would delay the project and would be contrary to the ground rules specified for it in the Federal Register on November 15, 1961 (26 F.R. 10698) and Draft Release 62-27. However, all comments of this nature will be preserved and considered in any later substantive revision of the affected Parts.

Draft Release 62-27 contained a notice of the revision of the procedural rules of the Federal Aviation Agency. The preamble to the release stated that the certification procedural rules in Part 406 of the Regulations of the Administrator were being considered for transfer to the Parts to which they specifically applied, insofar as they did not duplicate provisions already in those Parts. Comment was particularly invited as to whether this change would be a convenience to the user. No adverse comment was received. Therefore Part 13 [New], as proposed in the draft release (based on present Part 406), has been deleted from the final rule. Those provisions of Part 406 relating to medical certification procedures (§§ 406.12 and 406.31) have been transferred to and included in Part 67 [New]. Those provisions of Part 406 relating to Airman Certificates (§ 406.13), and Air Agency Certificates (§ 406.16) are deleted as unnecessary and as covered in pertinent part by Subchapter D "Airmen" [New]. The remaining provisions of Part 406, relating to Aircraft Certificates, Air Carrier Certificates and Air Navigation Certificates will be considered for inclusion in future subchapters of the recodification, as applicable.

As a result of the deletion of the proposed Part 13 (based on present Part 406) the proposed Part 15 (based on present Part 408) has been renumbered in the final rule as Part 13 "Enforcement Procedures" [New].

Section 11.25 has been revised and expanded to meet certain problems the Agency has encountered in processing petitions for rule making and exemptions. Many petitions do not contain enough information to allow a determination to be made of the matter. Others fail to specify clearly the regulations involved or the nature and extent of the requested action. As a result, the Agency must get additional information from its field personnel, the petitioner, or other sources, thereby unnecessarily delaying the handling of the petition. A number of petitions for exemption have been filed so close to the requested effective date of the exemption as to require priority handling, with attendant disruption of normal Agency work schedules.

Accordingly, the revised § 11.25 specifies in greater detail the information that must be included in petitions. In addition, except for good cause shown in the petition, it requires petitions for exemption to be filed at least 60 days before the requested effective date of the exemption to allow time for their orderly processing. As this revision is concerned only with agency procedure, compliance with the notice and public procedure provisions of the Administrative Procedure Act is unnecessary and it may be incorporated into the recodified Subchapter B [New].

Other minor changes of a technical clarifying nature or relaxatory nature have been made. They are not substantive and do not impose any burden on regulated persons.

Of the comments received on Draft Release 62-27, several suggested changes in style, format, or technical wording. These comments have been carefully considered and, where consistent with the style, format, and terminology of the recodification project, were adopted.

The definitions, abbreviations, and rules of construction contained in Part 1 [New] of the Federal Aviation Regulations apply to the new Subchapter B.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented. The Agency appreciates the cooperative spirit in which the public's comments were submitted.

In consideration of the foregoing, effective November 10, 1962, Chapter III of Title 14 of the Code of Federal Regulations is amended by deleting Parts 405, 408, and 409 and sections 406.12, 406.13, 406.16, and 406.31, and Chapter I of Title 14 of the Code of Federal Regulations is amended by adding Subchapter B [New]* reading as hereinafter set forth.

This amendment is made under the authority of sections 303(d), 313(a), 501 through 506, 601 through 608, and 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1344(d), 1354(a), 1401 through 1405, 1421 through 1428, and 1481).

*Includes Part 11—General Rule-Making Procedures [New] and Part 13—Enforcement Procedures [New].

Amendment 13-1**Adopted: June 7, 1963****Effective: July 16, 1963**

(Published in 28 F.R. 6064 on June 14, 1963, effective on July 16, 1963.)

The purpose of these amendments is to make technical improvements in the regulation and to clarify certain provisions. No change in policy or impairment of procedural rights is involved.

Revised paragraph (c) of § 13.19 reflects the practice of sending to the certificate holder, together with the statement of charges, a form on which he initially may mark one of the four procedural choices he has. The right to ask for a hearing in addition to an informal conference should be exercised only after the conference, and the rule is being clarified to this effect. The revised rule also codifies the practice of issuing the Administrator's order in case of default of the certificate holder and contains a reference to the provisions governing when a hearing is requested.

Section 13.35 is amended by making editorial improvements; making the language dovetail with revised § 13.19(c); expressly referring to the right to make a motion; and making express provision for the contingency that the Hearing Officer does not take jurisdiction upon a belated Request. Present paragraph (c) is omitted since its provisions have been inserted elsewhere by these amendments.

Section 13.31 is amended to correct inadvertent language purporting to limit the scope of Subpart C to hearings involving airman certificates, while of course these provisions apply as well in cases involving any other certificates. Section 13.45 is amended by striking the last sentence which reads as though amendments of the pleadings to conform to the evidence could be made as a matter of right. This change will make such amendments subject to the ruling of the Hearing Officer. This is the rule in the federal courts (F.R.C.P., Rule 15(a)(b)).

Section 13.49(a) is amended to make clear that failure of the allegations in the charges to show a violation of the Act or regulations or a lack of qualification may be asserted by motion to dismiss. A provision fixing the time for Answers to motions is also added to this section. The policy of not holding hearings outside of the 50 States, the District of Columbia and Puerto Rico is codified by amendment to § 13.55.

Section 13.67 is amended by combining the provisions of present paragraphs (a) and (c) and spelling them out more clearly. It is also made clear that in appropriate cases the proceeding will be ordered terminated only upon actual payment of the civil penalty agreed upon.

Editorial improvements are made in several of the provisions mentioned.

Since these amendments are procedural in nature, notice and public procedure thereon are not required and the amendments may be made effective less than 30 days after publication.

In consideration of the foregoing, effective July 16, 1963, Part 13 [New] of the Federal Aviation Regulations is amended as follows.

These amendments are made under the authority of sections 303(d), 307, 313(a), 501-505, 601-610, and 1001 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1344, 1348, 1354, 1401-1405, 1421-1430, and 1481).

The proposed amendment to § 13.61, making submission of written proposed findings and conclusions, and supporting reasons, discretionary with the Hearing Officer, is being adopted. It was opposed by only one of the comments on the ground that the parties may make these submittals as a matter of right. This is not so since these proceedings are not governed by sec. 8 of the Administrative Procedure Act.

Since the proposed amendment to § 13.45 is not being adopted, the reference thereto in § 13.67(a) is likewise omitted. However, the proposed rewording of this paragraph is adopted otherwise. The language is mandatory on the Hearing Officer, and does not absolve the Hearing Officer from responsibility for lack of clarity which would make his order insufficient for use as a complaint under § 801.26 of the Board's regulations.

In addition to the amendments proposed in the Notice, the following three amendments are made:

Section 13.41(b) as now written requires that the certificate holder's answer must be responsive to the allegations in the Notice of Proposed Certificate Action. Under this provision a general denial is not sufficient. It has been decided to ease the burden of pleading on respondents by permitting a general denial of those allegations of the Notice which go beyond identifying an airman or aircraft or describing airman or aircraft certificates, and § 13.41(b) is being amended accordingly.

Second, § 13.59(a), relating to evidence, is amended to make inadmissible in proceedings against a certificate holder who is a natural person any reports of accidents or incidents that this holder himself had to make to the Civil Aeronautics Board or this Agency. Reports required under Part 320 of the Safety Investigation Regulations of the Civil Aeronautics Board, or under §§ 91.3(c) and 91.75 (c) and (d) of the Federal Aviation Regulations, fall under this new provision. This amendment codifies existing FAA practice.

Last, § 13.65 is deleted. It provided for subsidiary applicability of the Federal Rules of Civil Procedure. Instead, Part 13 will be amended from time to time as the need for procedural rules not now expressly provided may appear.

These three amendments may be made without notice of rule making since they are procedural in nature. They do not impose a burden on any person but relax existing requirements.

All relevant matter presented in this proceeding has been fully considered.

This rule-making action is taken under the authority of sections 303(d), 313(a), (c), 609, 1001, 1002, 1004 and 1005 of the Federal Aviation Act of 1958 (49 U.S.C. 1344, 1354, 1429, 1481, 1482, 1484 and 1485).

In consideration of the foregoing, Part 13 of the Federal Aviation Regulations (14 CFR Part 13) is hereby amended, effective June 27, 1965, as follows.

Amendment 13-3

Authority of Area Managers and Area Counsels

Adopted: September 14, 1965

Effective: September 1, 1965

(Published in 30 F.R. 12024; September 21, 1965)

The purpose of this amendment is to reflect the delegation of authority to Area Managers and Area Counsels with respect to their exercise of functions in enforcement proceedings under Part 13 of the Federal Aviation Regulations.

Pursuant to the FAA decentralization program, the Regions are being divided into Areas. Notice of establishment of Area Offices is given in the Federal Register. Among the functions to be performed at the Area level is the prosecution of violations as provided in Part 13 of the Regulations. Accordingly, references to Area Managers and Area Counsels are being added. At the same time the references to "Assistant Administrator" are being corrected to reflect the present title of "Regional Director".

Specifically, Area Managers may exercise the same powers as Regional Directors with respect to seizure of aircraft, and § 13.17 (a) and (e) is being amended accordingly. References to Area Counsels are being added to § 13.3(b), Investigations; § 13.13, Reprimands.

mands; § 13.15(b) and (c), Civil Penalties; § 13.17(c) and (d), Seizure of Aircraft; § 13.19(c), Certificate Action (two places); § 13.21, Military Aircraft; and § 13.35(b), Request for Hearing. At the same time, in § 13.57(b) the erroneous reference to § 13.49(e) is being corrected to § 13.49(f). The provisions stated in terms of "FAA Counsel" may remain unchanged since Area Counsels are encompassed in this term.

The General Provisions of Paragraph 1 of Subpart D of the FAA Organization Statement of March 13, 1965, 30 F.R. 3395, apply to these delegations.

Since this amendment does not involve substantive rule making, notice and public procedure thereon are not required, and the amendment may be made effective immediately.

In consideration of the foregoing, Part 13 of the Federal Aviation Regulations, 14 CFR Part 13, is hereby amended, effective September 1, 1965.

This amendment is issued under the authority of sections 302(f), 303(d), 313(a), and 1001 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1343, 1344, 1354, 1481).

Amendment 13-4

Warning Notice of Violation

Adopted: June 9, 1966

Effective: July 16, 1966

(Published in 31 F.R. 8353, June 15, 1966)

The purpose of this amendment is to replace the references in § 13.11 to "a report * * * for the record" and "a letter of correction" by a reference to a "Warning Notice of Violation". New FAA Form 430-6 combines the Warning Notice and the report for the record. The conditions of issue, contents and effect of the Notice are the same as those of the letter of correction formerly used. The Notice is handled or sent to the addressee as the letter of correction used to be.

Since this amendment does not effect a substantive change, notice and public procedure thereon are not required.

In consideration of the foregoing, § 13.11 of Part 13 of the Federal Aviation Regulations (14 CFR 13.11) is amended, effective July 16, 1966.

This amendment is made under the authority of sections 313(a) and 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1481).

Unnumbered Amendment
Technical Amendments to Reflect Transition to
Department of Transportation

Adopted: April 4, 1967

Effective: April 1, 1967

(Published in 32 F.R. 5769, April 11, 1967)

The purpose of these amendments is to make changes in the Federal Aviation Regulations that are necessary because of the taking effect of the Department of Transportation Act (49 U.S.C. 1651 et seq.) on April 1, 1967. On April 1, 1967, the Federal Aviation Agency became the Federal Aviation Administration in the Department of Transportation, and the aviation safety functions of the Civil Aeronautics Board under Titles VI and VII of the Federal Aviation Act of 1958 were transferred to the National Transportation Safety Board.

This rule-making action therefore changes the term "Federal Aviation Agency", wherever it occurs in the Federal Aviation Regulations, to "Federal Aviation Administration", and the word "Agency" when used alone to denote the Federal Aviation Agency to "FAA". For reasons of economy the editions of these regulations that are currently for sale will not be reprinted merely to make these changes. Whenever they are reprinted for other reasons, the printing changes will be made. However, the pages of Part 1 reflecting the changes in definition of the term "Administrator" and the abbreviation "FAA" will be reprinted as soon as possible.

The changes made in the Parts containing references to the Civil Aeronautics Board that are affected by the transfer of functions to the National Transportation Safety Board are self-explanatory. Pages containing these changes will also be reprinted as soon as possible.

Notice and public procedure thereon are not required since these amendments merely reflect changes of law, and they may therefore be made effective immediately.

In consideration of the foregoing, the Federal Aviation Regulations (14 CFR Chapter I) are amended, effective April 1, 1967.

These amendments are made under the authority of sections 3(e), 6(e) and 9(f) of the Department of Transportation Act (15 U.S.C. 1652(e), 1655(c), 1657(f)) and section 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a)).

Amendment 13-5

Administrative Disposition of Violations

Adopted: May 16, 1967

Effective: May 23, 1967

(Published in 32 F.R. 7584, May 24, 1967)

The purpose of this amendment is to clarify the distinction between the administrative disposition of violations that are handled by Flight Standards personnel in the field and legal enforcement actions that are processed by the FAA counsel.

In furthering the FAA decentralization program and to provide greater discretion at the lowest operational level, authority is being given to personnel at that level to make final disposition by administrative action in place of legal enforcement action, whenever it is determined to be the most appropriate means of obtaining compliance with the Federal Aviation Regulations.

At present a violation disposed of by letter of reprimand is considered a legal enforcement action (§ 13.13). This amendment establishes safety compliance notices including a reprimand to violator if appropriate and letters of correction as administrative actions. Consequently, § 13.13 is deleted and § 13.67(a) is amended to delete authority of FAA Hearing Officers to issue reprimands. Section 13.11 is rewritten and placed into a new Subpart B—*Administrative Actions*. The remaining sections in present

Subpart B are unchanged and are placed in new Subpart C—*Legal Enforcement Actions*, and present Subpart C is redesignated as Subpart D.

Since this amendment is procedural in nature and does not impose a burden on any person, notice and public procedure thereon are not required and the amendment may be made effective immediately.

In consideration of the foregoing, Part 13 of the Federal Aviation Regulations (14 CFR Part 13) is amended, effective May 23, 1967.

This action is taken under the authority of §§ 302(f), 303(d), 313(a) and 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1343, 1344, 1354, 1481).

Part 13—Enforcement Procedures

[Subpart A—Investigative Procedures]

§ 13.1 Reports of violations.

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, or of any regulation or order issued under it, may report it to appropriate personnel of an FAA regional or district office.

(b) Each report made under this section is investigated by FAA personnel. The results of that investigation are the basis for determining the enforcement action that the FAA will take.

§ 13.3 Investigations.

(a) Under section 313 of the Federal Aviation Act of 1958 (49 U.S.C. 1354), the Administrator may conduct public hearings or investigations and take evidence and depositions, issue subpoenas, and compel testimony in the manner provided in section 1004 of the Act (49 U.S.C. 1484).

(b) For the purpose of investigating alleged violations of the Act, or any regulation or order issued under it, the Administrator's authority under sections 313 and 1004 has been delegated to the General Counsel, the Deputy General Counsel, each Associate General Counsel, and each Regional Counsel and Area Counsel.

[Subpart B—Administrative Actions]

§ 13.11 Administrative disposition of certain violations.

[(a) If it is found that a violation of the Federal Aviation Act of 1958, or an order or regulation issued under it, does not require legal enforcement action, a Flight Standards inspector or other appropriate official may issue a safety compliance notice including a letter of reprimand to the violator if appropriate, or a letter of correction that confirms

decisions and states the corrective action agreed to as acceptable to the FAA.

[(b) Except for any case in which the agreed upon corrective action is not successfully completed, any action taken under paragraph (a) terminates the matter upon which the action was based. If the agreed upon corrective action is not successfully completed, legal enforcement action may be initiated.]

[Subpart C—Legal Enforcement Actions]

§ 13.15 Civil penalties.

(a) Under section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471), a person who violates any provision of Title III, V, VI, or XII of that Act, or any regulation or order issued under one of those titles, is subject to a civil penalty of not more than \$1,000 for each violation.

(b) The Administrator may compromise any civil penalty. If a civil penalty is contemplated and it is considered advisable to compromise it, the General Counsel or the Regional Counsel or Area Counsel concerned sends a letter to the person charged with the violation, advising him of the charges against him and the law, regulation, or order that he is charged with violating, and offering to compromise the penalty. The person charged with the violation may present, to the official who signed the letter, any oral or written material or information in answer to the charges, explaining, mitigating, or denying the violation, or showing extenuating circumstances. Material or information so presented is considered in making the final determination as to probable liability for a civil penalty, or the amount for which it will be compromised.

(c) If the person charged with the violation offers to compromise for a specific amount, he

shall send a certified check or money order for that amount, payable to the Federal Aviation Administration. The General Counsel or the Regional Counsel or Area Counsel concerned may accept or refuse it.

(d) If the compromise amount is accepted, the person charged with the violation is notified, by letter, that the acceptance is full settlement of the civil penalty for the violation.

(e) If a compromise settlement of the civil penalty cannot be made, the Administrator may instigate proceedings in a United States District Court, under section 903 of the Act (49 U.S.C. 1473), to collect the penalty.

§ 13.17 Seizure of aircraft.

(a) Under section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473), a State or Federal law enforcement officer, or a Federal Aviation Administration safety inspector, authorized in an order of seizure issued by the Regional Director of the region, or Area Manager of the area in which the aircraft is located, may summarily seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or operator.

(b) Each person seizing an aircraft under this section shall place it in the nearest available and adequate public storage facility in the judicial district in which it was seized.

(c) The Regional Director or Area Manager, without delay, sends a written notice and a copy of this section, to the registered owner of the seized aircraft, and to each other persons shown by FAA records to have an interest in it, stating the—

(1) Time, date, and place of seizure;

(2) Name and address of the custodian of the aircraft;

(3) Reasons for the seizure, including the violations believed, or judicially determined, to have been committed; and

(4) Amount that may be tendered as—

(i) A compromise of a civil penalty for the alleged violation; or

(ii) Payment for a civil penalty imposed by a Federal court for a proven violation.

(d) The Regional Counsel of the region, or the Area Counsel of the Area, in which an aircraft is seized under this section immediately sends a report to the United States District Attorney for the judicial district in which it was seized, requesting him to institute proceedings to enforce a lien against the aircraft.

(e) The Regional Director or Area Manager directs the release of a seized aircraft whenever—

(1) The alleged violator pays a civil penalty or an amount agreed upon in compromise, and the costs of seizing, storing, and maintaining the aircraft;

(2) The aircraft is seized under an order of a Federal Court in proceedings in rem to enforce a lien against the aircraft, or the United States Attorney for the judicial district concerned notifies the FAA that he refuses to institute those proceedings; or

(3) A bond in the amount and with the sureties prescribed by the Assistant Administrator is deposited, conditioned on payment of the penalty, or the compromise amount, and the costs of seizing, storing, and maintaining the aircraft.

§ 13.19 Certificate action.

(a) Under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), the Administrator may reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, and may re-examine any civil airman.

(b) If, as a result of such a reinspection, re-examination, or other investigation made by him, the Administrator determines that the public interest and safety in air commerce requires it, he may issue an order amending, suspending, or revoking, all or part of any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate.

(c) Before issuing an order under paragraph (b) of this section, the General Counsel or the Regional Counsel or Area Counsel concerned advises the certificate holder of the charges or other reasons upon which the Ad-

administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked. The holder may by checking the appropriate box on the form that is sent to him with the Notice of Proposed Certificate Action, elect to—

- (1) Admit the charges and surrender his certificate;
- (2) Answer the charges in writing;
- (3) Request an opportunity to be heard in an informal conference with the FAA counsel; or
- (4) Request a formal hearing.

Except as provided in § 13.35(b), unless the holder returns the form and, where required, an Answer or motion, with a postmark of not later than 15 days after the date he received the Notice, the order of the Administrator is issued as proposed. If the holder has requested an informal conference with the FAA counsel, he may after that conference also request a formal hearing in writing with a postmark of not later than 10 days after the close of the conference. After considering any information submitted by the holder the General Counsel or the Regional Counsel or Area Counsel concerned issues the order of the Administrator, except that if the holder has made a valid request for a formal hearing initially or after an informal conference, [Subpart D] of this Part governs further proceedings.

(d) Any person whose certificate is affected by an order issued under this section may appeal to the National Transportation Safety Board. If the certificate holder files an appeal with the Board, the Administrator's order is stayed unless he advises the board that an emergency exists and safety in air commerce requires that the order become effective immediately. If he so advises the Board, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advise.

§ 13.21 Military aircraft.

If a report made under this Part indicates

that, while performing his official duties, a member of the Armed Forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. Ch. 47), has violated the Federal Aviation Act of 1958, or a regulation or order issued under it, the General Counsel or the Regional Counsel or Area Counsel concerned sends a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

§ 13.23 Criminal penalties.

(a) Sections 902 and 1203 of the Federal Aviation Act of 1958 (49 U.S.C. 1472 and 1523), provide criminal penalties for any person who knowingly and willfully violates specified provisions of that Act or any regulation or order issued under those provisions.

(b) If an inspector or other employee of the FAA becomes aware of a possible violation of any criminal provision of that Act (except a violation of section 902 (i) through (m) which is reported directly to the Federal Bureau of Investigation), he shall report it to the Office of the General Counsel or the Regional Counsel concerned. If appropriate, that office refers the report to the Department of Justice for criminal prosecution of the offender. If such an inspector or other employee becomes aware of a possible violation of a Federal statute that is within the investigatory jurisdiction of another Federal agency, he shall immediately report it to that agency according to standard FAA practices.

Subpart [D]—Rules of Practice for Hearings In FAA Certificate Proceedings

§ 13.31 Applicability.

This subpart applies to proceedings in which the holder of a certificate has made a request under § 13.19 of this Part for a formal hearing before a Hearing Officer of the FAA.

§ 13.33 Appearances.

Any party to a proceeding under this subpart may appear and be heard in person or by attorney.

§ 13.35 Request for Hearing.

(a) If the certificate holder elects to have a formal hearing, either after he receives the Notice of Proposed Certificate Action or after an informal conference with the FAA counsel, he shall submit his Answer to the allegations in the Notice, or file a motion under § 13.49, together with his request for a formal hearing as provided in § 13.19(c).

(b) If the certificate holder submits a request for formal hearing, and his Answer or motion, after the 15- or 10-day period provided in § 13.19(c), but before an order is issued, the FAA counsel sends it to the Hearing Officer. If, in the opinion of the Hearing Officer, there was good cause for the failure to submit a timely request for hearing, or Answer or motion, he may, in his discretion, entertain the motion or order a hearing. If he does not do so, the General Counsel or Regional Counsel [or Area Counsel] issues the order of the Administrator.

§ 13.37 Hearing Officer's powers.

Any Hearing Officer may—

(a) Give notice concerning, and hold, pre-hearing conferences and hearings;

(b) Administrator oaths and affirmations;

(c) Examine witnesses;

(d) Rule on claims of privilege against self-incrimination and compel testimony by conferring immunity under section 1004(i) of the Federal Aviation Act of 1958 (49 U.S.C. 1484);

(e) Issue subpoenas and take depositions or cause them to be taken;

(f) Rule on offers of proof;

(g) Receive evidence;

(h) Regulate the course of the hearing;

(i) Hold conferences, before and during the hearing, to settle and simplify issues by consent of the parties;

(j) Dispose of procedural requests and similar matters; and

(k) Issue an order.

§ 13.39 Disqualification of Hearing Officer.

The Hearing Officer shall withdraw from a case if, at any time, he considers himself to be disqualified.

§ 13.41 Pleadings.

(a) In cases sent to the Hearing Officer, the Notice of Proposed Certificate Action constitutes the statement of the facts upon which the action is proposed.

(b) The certificate holder's Answer must be responsive to the allegations set out in the Notice. Any allegation that is not denied is considered to be admitted. However, allegations other than those identifying an airman, stating the number and type of his certificate and ratings, or identifying an aircraft, its number and type, may be answered by a general denial.

(c) Averments in an Answer, or other pleading, to which no responsive pleading is required, are considered to be denied.

§ 13.43 Service and filing of pleadings, motions, and documents, other than Answer.

Each pleading, motion, or document, other than an Answer, must at the time of filing, be served on each other party, by delivering a copy to him or by mailing a copy to him at the last address filed with the FAA by the certificate holder as required by this chapter. However, if a party is represented by an attorney, the service shall be made upon him.

§ 13.45 Amendment of Notice and Answer.

At any time more than 10 days before the date of hearing, any party may amend his Notice, Answer, or other pleading, by filing the amendment with the Hearing Officer and serving a copy of it on each other party. After that time, he may amend it only in the discretion of the Hearing Officer. If an amendment to an initial pleading has been allowed, the Hearing Officer shall allow the other parties a reasonable opportunity to answer.

§ 13.47 Withdrawal of Notice or Request for Hearing.

At any time before hearing, the FAA counsel may withdraw the Notice of Proposed

Certificate Action and the certificate holder may withdraw his Request for Hearing.

§ 13.49 Motions.

(a) *Motion to dismiss for insufficiency.* A respondent who requests a formal hearing may, in place of his Answer, file a motion to dismiss for failure of the allegations in the Notice of Proposed Certificate Action to state a violation of the Act or of this chapter or to show lack of qualification of the respondent. If the Hearing Officer denies the motion, the respondent shall file his Answer within 10 days.

(b) *Motion to strike stale allegations.* If the Notice of Proposed Certificate Action contains an allegation of a violation that occurred more than six months before the date of mailing or other service of the Notice, the respondent may move to strike that allegation in any of the following cases:

(1) In any case in which the Notice does not allege lack of qualification of the certificate holder, [FAA] counsel is required to show by answer filed within seven days of service of the motion that good cause existed for the delay, or that if the allegations are proved, the imposition of a sanction is warranted in the public interest notwithstanding the delay or the reasons therefor. The respondent may file a reply to the answer within the time fixed by the Hearing Officer. The Hearing Officer may require [FAA] counsel to make his factual allegations of good cause more definite, certain or detailed. A hearing on the issue of good cause is held only if the respondent raises a genuine, pertinent, and substantial issue of fact. If the Hearing Officer does not find that good cause for the delay existed or that the public interest requires imposition of sanctions, notwithstanding the delay, if the allegations are proved, he orders the stale allegations stricken and proceeds to adjudicate only the remaining portions, if any, of the Notice.

(2) In any case in which the Notice alleges lack of qualification of the certificate holder the Hearing Officer determines first whether an issue of lack of qualification is presented if the stale allegations, standing

alone or together with the timely allegations, are true. If the Hearing Officer finds that the issue is not presented, he orders the stale allegations stricken and proceeds to adjudicate the remaining portions, if any, of the Notice. If he finds a qualification issue presented, he proceeds to hearing, advising the respondent that he is to defend against the allegation of lack of qualification to hold his certificate and not only against a proposed remedial sanction.

A motion to strike under this paragraph may be combined with a motion to dismiss any remaining parts of the Notice under paragraph (a) of this section.

(c) *Motion for more definite statement.* The certificate holder may, in place of his Answer, file a motion that the allegations in the Notice be made more definite and certain. If the Hearing Officer grants the motion, the [FAA] counsel shall comply within 10 days after the date it is granted. If the Hearing Officer denies the motion the certificate holder shall file his Answer within 10 days after the date it is denied.

(d) *Motion for judgment on the pleadings.* After the pleadings are closed, either party may move for a judgment on the pleadings.

(e) *Motion to strike.* Upon motion of either party, the Hearing Officer may order stricken, from any pleading, any insufficient allegation or defense, or any immaterial, impertinent, or scandalous matter.

(f) *Motion for production of documents.* Upon motion of any party showing good cause, the Hearing Officer may, in the manner provided by Rule 34, Federal Rules of Civil Procedure, order any party to produce any designated document, paper, book, account, letter, photograph, object, or other tangible thing, that is not privileged, that constitutes or contains evidence relevant to the subject matter of the hearing, and that is in the party's possession, custody, or control.

(g) *Consolidation of motions.* A party who makes a motion under this section shall join with it all other motions that are then

available to him. Any objection that he does not so raise is considered to be waived.

(h) *Answers to motions.* Any party may file an Answer to any motion under this section within 5 days after service of the motion.

§ 13.51 Intervention.

Any person may move for leave to intervene in a proceeding and may become a party thereto, if the Hearing Officer, after the case is sent to him for hearing, finds that the person may be bound by the order to be issued in the proceeding or has a property or financial interest that may not be adequately represented by existing parties, and that the intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, a motion for leave to intervene may not be considered if it is filed less than 10 days before the hearing.

§ 13.53 Depositions.

After the respondent has filed a Request for Hearing and an Answer, either party may take testimony by deposition in accordance with section 1004 of the Federal Aviation Act of 1958 (49 U.S.C. 1484) or Rule 26, Federal Rules of Civil Procedure.

§ 13.55 Notice of Hearing.

The Hearing Officer to whom the case is assigned shall give the parties adequate notice of the date of the hearing and the place where it will be held. The Hearing Officer may hold the hearing at the city in which there is located the Regional Headquarters of the FAA, the originating FAA office, or the Flight Standards district office nearest to the residence of the certificate holder, or at any other location that the Hearing Officer directs. Hearings are held only within the 50 States, the District of Columbia, and Puerto Rico.

§ 13.57 Subpoenas and witness fees.

(a) The Hearing Officer to whom a case is assigned may, upon application by any party to the proceeding, issue subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence at a hear-

ing or for the purpose of taking depositions. However, the application for producing evidence must show its general relevance and reasonable scope. This paragraph does not apply to the attendance of FAA employees or to the production of documentary evidence in the custody of such an employee at a hearing.

(b) A person who applies for the production of a document in the custody of an FAA employee must follow the procedure in § 13.49-(f). If he applies for the attendance of an FAA employee, he must send the application, in writing, to the Hearing Officer, setting forth the need for that employee's attendance.

(c) A witness in a proceeding under this subpart is entitled to the same fees and mileage as is paid to a witness in a court of the United States under comparable circumstances. The party at whose instance the witness is subpoenaed or appears shall pay the witness his fees.

§ 13.59 Evidence.

(a) Each party to a hearing may present his case or defense by oral or documentary evidence, submit evidence in rebuttal, and conduct such cross-examination as may be needed for a full disclosure of the facts. In a proceeding against a certificate holder who is a natural person, any report filed by that holder as required by the [National Transportation Safety Board] or the FAA is not admissible in evidence. However, such a report may be used to impeach the testimony of the certificate holder.

(b) Except with respect to affirmative defenses, the burden of proof is upon the FAA counsel.

§ 13.61 Argument and submittals.

The Hearing Officer shall give the parties adequate opportunity to present arguments in support of motions, objections, and the final order. The Hearing Officer may determine whether arguments are to be oral or written.

At the end of the hearing the Hearing Officer may, in his discretion, allow each party to submit written proposed findings and conclusions and supporting reasons for them.

§ 13.63 Record.

The testimony and exhibits presented at a hearing, together with all papers, requests, and rulings filed in the proceedings are the exclusive basis for the issuance of an order. Either party may obtain a transcript from the official reporter upon payment of the fees fixed therefor.

§ 13.67 Final order of Hearing Officer.

[(a) If the final order of the Hearing Officer makes a decision on the merits, it contains a statement of his findings and conclusions on all material issues of fact and law. If the Hearing Officer determines that safety in air commerce or air transportation and the public interest so require, he may issue an order amending, suspending or revoking the respondent's certificate. The certificate action imposed may not be more severe than that pro-

posed in the Notice of Proposed Certificate Action. If the Hearing Officer finds that the allegations of the notice have been proved, but that no sanction is required, he makes appropriate findings and orders the notice terminated. If the Hearing Officer finds that the allegations of the notice have not been proved, he orders the notice dismissed. If the Hearing Officer finds it to be equitable and in the public interest, he may order the proceeding terminated upon payment by the respondent of a civil penalty in an amount agreed upon by the parties.]

(b) If the order is issued in writing, it shall be served upon the parties.

(c) If the Hearing Officer orders respondent's certificate to be amended, suspended, or revoked, he shall state in the order that the respondent has the right to appeal to the National Transportation Safety Board.